(23,916)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 765.

JOSE McMICKING, APPELLANT,

vs.

ROBERT G. SCHIELDS.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 4, 1913.

6 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

ROBERT G. SCHIELDS, Plaintiff and Appellee,
versus
JOSÉ MCMICKING, Defendant and Appellant.

Habeas Corpus.

On Appeal to the Supreme Court of the United States.

Certified Copy of Proceedings Had in the Supreme Court of the Philippine Islands in the Above Entitled Cause.

1 UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

PHILIPPINE ISLANDS,
City of Manila, ss:

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the following is a true transcript and translation of certain proceedings had in this Court in case numbered 6693:

Petition.

UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

In the Matter of the Application of ROBERT G. SHIELDS for a Writ of Habeas Corpus.

To the Honorable Justices of the Supreme Court:

Robert G. Shields respectfully shows in his petition that he finds himself illegally imprisoned and deprived of his liberty by Mr. José McMicking, Sheriff of the City of Manila, P. I., by virtue of a sentence pronounced by the Honorable Charles S. Lobingier, Judge of the Court of First Instance of the City of Manila, P. I.

That said imprisonment and deprivation of his liberty are illegal, because the said Court of First Instance denied him the due process of law guaranteed by the Philippine Bill of Rights. The said illegalities are as follows:

That on December 21st 1910, the petitioner appealed from a judgment of the lower court sentencing him for the crime of
2 theft.

That on December 23rd the petitioner, without having been asked to answer the complaint, was notified that the case would be heard at 10 a. m. on the 24th.

When the case was called at 10 a. m. on December 24th, and while the petitioner was arraigned, he asked for time in which to answer the complaint, which request was denied by the court, who ordered the Clerk to enter on the record that the petitioner pleaded "Not Guilty" to the complaint.

Thereupon the petitioner's attorney also asked for time in which to prepare a defense, which petition was also denied by the same court, to which ruling the petitioner's attorney excepted and asked that the exception, together with the requests of the petitioner which had been denied, be entered on the record.

Wherefore, the petitioner prays the Honorable Supreme Court to issue a Writ of Habeas Corpus in his favor, reversing the judgment pronounced by the lower court as being contrary to law, and that the petitioner be set at liberty.

Manila, P. I., January 4, 1911.

Very respectfully,

(Sgd.) ROBERT G. SHIELDS,
Petitioner.

Robert G. Shields, being first duly sworn, states that he is the petitioner named in the foregoing document subscribed by him, and that the facts stated therein are true.

(Sgd.) ROBERT G. SHIELDS.

Subscribed and sworn to before me, this 4th day of January, 1911, having exhibited his certificate of registration, Series F, No. 4396, issued March 13, 1910, in the City of Manila.

(Sgd.) L. JOAQUIN,
[SEAL.] *Notary Public until December,* 1912.

3 This petition was filed in the office of the Clerk of the Supreme Court on January 4, 1911.

Thereafter, on January 5, 1911, summons were duly issued and served on the parties.

Thereafter, on the 6th day of January 1911, the Acting Attorney-General filed the following answer on behalf of the Director of Prisons:

(Title of Court and Cause Omitted.)

Comes now the Director of Prisons, represented by the Acting Attorney-General, and complying with the order of this Honorable Court, requiring him to appear and show cause why the
4 Writ of Habeas Corpus prayed for by Robert G. Shields should not be granted, respectfully represents:

I. That the undersigned has now in his possession and under his control and custody, in Bilibid Prison, in Manila, the said Robert G. Shields.

II. That said Robert G. Shields was turned over to the Director of Prisons by the Sheriff of the City of Manila on January 4th 1911, by virtue of an order of commitment issued by the Hon. Charles S. Lobingier, Judge of the Court of First Instance of Manila, a certified copy of which order is attached hereto and marked Exhibit "A."

III. That said Robert G. Shields is now serving a sentence of four months and one day of arresto mayor in Bilibid Prison, by virtue of a judgment imposed by the Court of First Instance of Manila in criminal case No. 6911, instituted against the said defendant for the crime of theft, a certified copy of which judgment is attached hereto, marked Exhibit "B."

IV. That said Robert G. Shields is now a prisoner in Bilibid Prison, by virtue of said order of commitment issued in consequence of a judgment of conviction dictated by a competent tribunal, such as the Court of First Instance of the City of Manila, within the jurisdiction of which the said accused committed the crime of which he was tried and convicted.

By virtue of which, the undersigned, on behalf of the Director of Prisons, respectfully prays that for the reasons cited, the Writ of Habeas Corpus prayed for by the petitioner Robert G. Shields be denied, and that the petitioner pay the costs of these proceedings.

Manila, P. I., January 6, 1911.

(Sgd.) GEORGE R. HARVEY,
Acting Attorney-General.

Rec'd copy this 6 day of Jan. 1911.
(Sgd.) G. E. CAMPBELL,
Att'y for Petitioner.

(EXHIBIT "A.")

"A."

United States of America.
Los Estados Unidos de America.

Philippine Islands.
Islas Filipinas.

No. 6911.

THE UNITED STATES
LOS ESTADOS UNIDOS
vs.
ROBERT G. SHIELDS.

Crime } Hurto.
Delito }

To the Director of Prisons:
Al Director de Prisiones:

I hereby commit to you the person of Robert G. Shields.

Remito á Vd. la persona de
sentenced by this court to suffer cautro (4) meses y un (1)
condenado por este Juzgado á la pena de
día de arresto mayor imprisonment and to pay a fine of
y costas—
and in case of insolvency to suffer subsidiary im-
y en caso de insolvencia á sufrir la prisión subsi-
prisonment for
diaria por espacio de
The time of imprisonment will commence to run from
La condena empezará desde
the 3 day of Enero, 1911.
el día de 190-.

(Sgd.) CHARLES S. LOBINGIER,
Judge of the Court of First Instance of the City of Manila, Part 1.

Left thumb.

6 *Juez del Juzgado de Primera Instancia de la Ciudad de Manila, Sala I.*

A true copy I certify:
(Sgd.) GEO. R. HARVEY,
Acting Attorney-General.

(EXHIBIT "B.")

"B."

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the District of Manila, Part I.

No. 6911.

THE UNITED STATES OF AMERICA
versus
ROBERT G. SHIELDS.

Sentence.

The accused is charged with the crime of hurto, committed by taking certain drugs and medicines belonging to the Bureau of Agriculture. The facts as to the taking are undisputed; the defendant admits that he took all of the articles in question, but claims that he did so with the consent of the Shipping Clerk Frandon, and that the accused had them conveyed to a drug store which he owns and operates, where they were found prior to his arrest. Frandon, who was called as a witness, denies positively that he ever gave such consent, and as he is certainly quite as disinterested as the accused, and as this is a matter of defense which is incumbent upon the accused to prove, we would not be justified

in finding that any such consent was given. Nor, if it had been, do we see that it would materially affect the case. The defendant is a person of intelligence, he testifies that he is a graduate of Howard University and has attended the University of Santo Tomas
7 in this city. He has also been in the government service and he certainly may be presumed to know that a shipping clerk has no right or authority to give away property belonging to the government.

It is also claimed that the property in question is of little or no value, and that the defendant, though taking it to his drug store, placed it in storage in the rear and did not expose it for sale in the front part. As to the value it may be conceded that the government failed to prove the specific market value of all the articles in question, but that most of them are salable is the testimony of the witness Cherbank, who is declared by counsel for the defense to be disinterested and reliable. This witness testifies that while certain of the articles, like green soap, are not salable, others, like vaseline, creoline and quinine are perfectly salable. As to the serum there is testimony of Dr. Nesom that it is worth more than ten pesos a bottle, and while it is an article not usually sold in drug stores, it also appears that the defendant has or had horses, needing treatment for which the serum might be used. Besides, it is not necessary in order to constitute this offense that the property taken should be of any specific value; it is sufficient if it is actually property and belongs to another.[1] We do not think, therefore, that we could find from this evidence that the accused had no intention to misappropriate. He admits that after he had taken the property into his possession he began to suspect that some one might charge that he had done so unlawfully, but nevertheless he did not return it and made no effort to restore it to the Bureau whose property he
8 knew it was. The rule in cases of this kind is that the possession of the property raises the presumption of guilt unless satisfactorily explained,[2] and we do not think that any satisfactory explanation is offered here.

At the beginning of the trial the defendant asked for further time to prepare, and invoked certain sections of G. O. 58, which, in our judgment, were not applicable to this case. The prosecution did not file a new complaint in this court. Defendant was tried on the identical complaint which was presented in the court below as long ago as December first. To that complaint, as the record shows, he pleaded not guilty and having further brought this case here on appeal the presumption is that such plea continued and to allow delays for the reiteration of such a plea would be an empty formality. The law does not require a vain and useless thing and the provision in question must be construed as applying to cases where a new complaint is filed in this court.

But aside from this we think that the time of trial caused no prejudice to the accused.[3] As we have seen, the complaint was filed

[1] U. S. v. De la Cruz, 12 Phil. 87; U. S. v. Galanco, 11 Phil. 574.
[2] U. S. v. Paguia, 10 Phil. 90; U. S. v. Jameor, 10 Phil. 137.
[3] Act 190, Sec. 503.

on December first, and the accused had more than three weeks to prepare before the trial in this court. During this period there were evidently one or more continuances and finally it seems the defendant had to be called into the Municipal Court by a bench warrant. Upon bringing the case here it was incumbent upon him to follow it up and to be ready and waiting its disposition by this court. Notice of the trial was sent both to him and to his counsel the day before and it was not claimed that defendant could
9 have produced any further testimony if the case had been postponed. On the contrary, it appears that he called one witness who did not testify in the court below. After all the question in the case is mainly one of law. The principal controversy as to the facts relates to the question of the alleged permission to take the articles, and this, as we have seen would not have excused the defendant, even had it been proved, though he admits that himself and Frandon are the only witnesses on that point.

On the whole we see no alternative but to find the accused guilty as charged, and since all of the property has been recovered and returned under orders of the court to the Bureau and since the testimony is not entirely clear on the question of value, we shall give the accused the benefit of the doubt on this point and find him guilty under Penal Code Art. 518 (5), it being clear that the articles were at least of the value there specified. Nevertheless by virtue of Art. 520 (2) we must apply the penalty next higher, which is the same as that fixed by the lower court. The accused is therefore sentenced to four months and one day of arresto mayor, and to pay the costs of both instances.

By the Court:

(Signed) CHARLES S. LOBINGIER, *Judge.*

Manila, P. I., December 27, 1910.

A true copy, I certify:

(Sgd.) GEO. R. HARVEY,
Acting Attorney-General.

10 On the same date, on January 6, 1911, the Acting Attorney-General filed the following answer on behalf of the Sheriff of the City of Manila.

(Title of Court and Cause Omitted.)

Comes now the Sheriff of the City of Manila, represented by the Acting Attorney-General, and complying with the order of this Honorable Court, requiring him to appear and show cause why it should not issue the Writ of Habeas Corpus prayed for by Robert G. Shields, respectfully shows:

I. That the said Robert G. Shields is not now under the control or in the custody of the respondent as Sheriff of the City of Manila.

II. That the said Robert G. Shields, by virtue of a judgment pronounced by the Hon. Charles S. Lobingier, Judge of the Court of

First Instance of Manila, in criminal case No. 6911 instituted against him for theft, was sentenced to the penalty of four months and one day of arresto mayor, and to pay the costs.

III. That by virtue of said judgment of conviction, and by an order of commitment issued by the Hon. Judge Charles S. Lobingier, of the Court of First Instance of Manila, a certified copy of which is attached to this document marked Exhibit "A", the respondent as Sheriff of the City of Manila delivered the person of Robert G. Shields to the Director of Prisons, on January 4, 1911.

IV. That the said Robert G. Shields is now in Bilibid Prison in the custody of the Director of Prisons, serving the sentence of imprisonment imposed in the said judgment of the Court of First Instance of Manila, a certified copy of which is attached
11 hereto and marked Exhibit "B."

V. That said Robert G. Shields is now a prisoner in Bilibid Prison, by virtue of an order of commitment issued in consequence of a judgment of conviction pronounced by a competent tribunal, as is the Court of First Instance of Manila, within the jurisdiction of which the crime was committed of which he was tried and convicted.

Wherefore, the undersigned, on behalf of the respondent, respectfully prays that, for the reasons cited, the Writ of Habeas Corpus prayed for by Robert G. Shields be denied.

Manila, P. I., January 6, 1911.

(Sgd.) GEO. R. HARVEY,
Acting Attorney-General.

Rec'd copy this 6 day of Jan. 1911.

(Sgd.) G. E. CAMPBELL,
Att'y for Petitioner.

Thereafter, on January 13, 1911, the Clerk of the Supreme Court sent the following letter to the Director of Prisons:

JANUARY 13, 1911.

The Director of Prisons, Manila, P. I.

SIR: The appellant Robert G. Shields having furnished bail in the sum of Five Hundred Pesos (P500.00), Philippine currency, in case No. 6693, Habeas Corpus proceedings directed against the Director of Prisons, with the approval of this Court, you are hereby ordered to immediately release the said appellant, unless there should
12 be another case pending against him for which he should be detained.

The appellant's bondsmen are Mrs. T. N. McKinney and J. F. Dresser, both residents of the City of Manila.

Respectfully,

____ ____,
Clerk, Supreme Court, P. I.

Thereafter, on March 27, 1911, the Supreme Court adopted the following resolutions:

"The Court not having been able to agree as to the resolution of the application for a Writ of Habeas Corpus filed by Robert G. Shields

against José McMicking, it is ordered that the same be set for rehearing on the first day set for the hearing of motions of the general term of court in July 1911, without prejudice to the applicant to remain at liberty under bond."

Thereafter, on July 17, 1911, the case was submitted to the Court, and Justices Florentino Torres, Victorino Mapa, E. Finley Johnson, A. C. Carson and Sherman Moreland were present, and the parties also agreed that they submit the case to the Justices who were not then present.

Thereafter, on March 25, 1912, the Court rendered the following decsion:

(Title of Court and Cause Omitted.)

MORELAND, *J.*:

Without prejudice to writing later, if necessary, an opinion setting out more at length the reasons for this decision, the writ of habeas corpus is hereby allowed and the accused discharged from custody. For the present we present as the basis for our decision the following:

13 1. The denial to the accused of the time, at least two days, to prepare for trial, expressly given to him by mandatory statute, there being absolutely no discretion lodged in the court concerning the matter, is in effect the deprivation of the constitutional right of due process of law, to a trial before condemnation, said statute being for the purpose of making practically effective in benefit of the accused said constitutional provision. If the court were given any discretion in the matter, as it would be when, after the two days have expired, it is asked by the accused for further time to prepare, the question presented would be different. In such case habeas corpus would not lie.

2. The denial to the accused of a constitutional right does one of two things, it either ousts the court of jurisdiction to enter a judgment of conviction, or it deprives the record of all legal virtue, and a judgment of conviction entered thereon is a nullity, it having nothing to support it. Some of the members of this court incline to the one theory and some to the other; while still others believe that there is no essential difference between the two. Most are agreed, however, that the writ must issue in either case. Matters which affect constitutional rights are not usually procedural in the sense in which that word is used in the arguments in this case. Generally speaking, mere errors cannot give rise to habeas corpus. It is only when there is a lack of jurisdiction, or when the judgment is otherwise a nullity, that habeas corpus will lie. The denial of a constitutional right produces one or the other of these results.

3. The guaranty of the right to a hearing before condemna-
14 tion is illusory and vain if the accused is not permitted to be heard through the testimony of his witnesses. This is especially true in a case such as the one at bar, wherein no appeal lies from the decision of the court below. Of what avail is the constitutional right to have compulsory process for witnesses if he be not accorded the time expressly and mandatorily given by law to pro-

duce them? Of what significance is the right to be confronted by the witnesses against him if, in violation of an express mandatory statute, enacted for the very purpose of assuring him a trial, he is refused the right to produce his own? It amounts to nought to be informed of the nature and cause of the charge against him if he cannot refute that charge by the testimony of witnesses. A trial is a farce if it is conducted in such a way that, aside from any fault or failure of his own, it is impossible for the accused to defend himself; in other words, without due process of law.

4. If the accused is not entitled to habeas corpus he is without remedy, although he has been deprived of rights which the statute expressly and mandatorily gives him. We are of the opinion that habeas corpus ought to lie by reason of the general revisory and supervisory powers which this court has in cases of this kind.

We concur:

C. S. ARELLANO, *Chief Justice.*
A. C. CARSON, *Justice.*
GRANT T. TRENT, *Justice.*

15 JOHNSON, *J.*, Dissenting:

The petitioner seeks the writ of habeas corpus. He was found guilty of the crime of larceny in the Municipal Court of the City of Manila, and sentenced to be imprisoned for a period of four months and one day. From that decision he appealed to the Court of First Instance of the City of Manila, where, after trial, he was again sentenced to be imprisoned for four months and one day of arresto mayor, with the costs. From that sentence he appealed to the Supreme Court. The record does not show whether his appeal was perfected or not.

Later he presented a petition in this Court, praying for the writ of habeas corpus, alleging that certain provisions of General Orders No. 58 had been violated and that he had not been given an opportunity to properly prepare his defense. He also alleged that he had been deprived of his liberty without due process of law. It is not denied that the lower court had jurisdiction of both the person and the subject matter.

The questions presented by the petition in this Court were evidently presented in the court below. The Honorable Charles S. Lobingier, Judge, in passing upon the question, said:—

"At the beginning of the trial the defendant asked for further time to prepare and invoked certain sections of General Orders No. 58, which, in our opinion, are not applicable to this case. The prosecution did not file a new complaint in this Court. The defendant was tried on the identical complaint which was presented in the court below as long ago as December 1st. (date of trial December
16 24th). To that complaint, as the record shows, he plead 'Not Guilty' and having further brought it to this court on appeal, the presumption is that such plea continued. To allow delays for the reiteration of such a plea would be an empty formality. The law does not require a vain or useless thing and the provision in question must be construed as belonging to a case where a new complaint is filed in this Court.

"But aside from this, we think that the time of trial caused no prejudice to the accused. (Art. 503, Act No. 190.) As we have seen the complaint was filed on December 1st and the accused had more than three weeks to prepare before trial in this Court. During this period there was evidently one or more continuances and finally it seems that the defendant had to be called into the municipal court by bench warrant. Upon bringing the case here it was incumbent upon him to follow it up and to be ready and waiting its disposal in this court. Notice of the trial was sent both to him and his counsel the day before and it was not claimed that the defendant could produce any further testimony if the case had been postponed; on the contrary, it appears that he called one witness who did not testify in the court below.

"After all the question in this case is mainly one of law. The principal controversy as to the facts relates to the question of the alleged presumption of taking the articles; this, as we have seen, would not have excused the defendant, even had it been proved, though he admits, that, himself and Frandon were the only witnesses on that point."

After a careful examination of the record, we are of the opinion that at most an error only was committed by the lower court.

17 No rule of law is better settled than the one which provides, that, the writ of habeas corpus can not be substituted for an appeal.

Gonzales v. Wolf, 12 Phil. Rep. 436;
In re Lincoln, 202 U. S. 178;
Crossley v. California, 168 U. S. 640;
Whitney v. Dick, 202 U. S. 132.

Moreover it appears from the record that the defendant was restrained of his liberty and was in the custody of an officer under process issued by a court, and by virtue of a judgment or order of a court of record, and that that court had jurisdiction to issue the process, to render the judgment and to make the order.

Article 528 of the Code of Procedure in Civil Actions provides:

"If it appears that the person alleged to have been restrained of his liberty is in the custody of an officer, under process issued by a court or magistrate, or by virtue of a judgment or order of a court of record, and that court or magistrate had jurisdiction to issue the process, render the judgment or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment or order."

See also in support of the general proposition that this Court can not revise a judgment of the court below under a petition for the writ of habeas corpus, the cases of, Ex Parte Watkins, 3 Peters (U. S.) 193, 202; Ex Parte Parks, 93 U. S. 18; where the courts have said:

"Where an inferior court has jurisdiction of the cause and the person in a criminal suit, and no writ of error lies in this

18 court, it will not, on habeas corpus, review the legality of the proceedings."

"It is only where the proceedings below are entirely void, either for want of jurisdiction or other cause, that such relief will be given."

In the case of In re Swan (150 U. S. 637, 548) the Supreme Court of the U. S., speaking through its Chief Justice, Mr. Fuller, said:

"We reiterate what has been so often said before that the writ of habeas corpus can not be used to perform the office of a writ of error or appeal, but when no writ of error or appeal will lie, if the petitioner is imprisoned under a judgment of a Circuit Court which had no jurisdiction of the person or subject matter, or authority to render the judgment complained of, then relief may be accorded."

"We entertain no doubt whatever that the Circuit Court had jurisdiction and it necesarily follows that its determination that the action of the constable was illegal and that he was in contempt in seizing and persisting in holding the property, is not open to review in this proceeding."

In the case of Ex Parte Shaw (7 Ohio State 81) (70 American Decisions 55), the Supreme Court of Ohio said:

"The court had jurisdiction over the offence and its punishment. It had authority to pronounce sentence and while in the legitimate exercise of its power committed a manifest error and mistake, in the awarding of the number of years of punishment. The sentence was not void, but erroneous. The writ of error and of habeas corpus have each their separate office; for errors and irregu-
19 larities in such cases, the summary remedy of habeas corpus can not be had.

Ex Parte Kellogg, 6 Vt. 509;
In re Prime, 1 Barber (N. Y.) 340.

The petitioner is detained by virtue of a judgment of a court possessing general jurisdiction in criminal cases. This judgment can not be re-examined on habeas corpus.

Ex Parte Grace, 12 Iowa, 208;
79 American Decisions, 529.

The writ of habeas corpus is undoubtedly the proper remedy for every unlawful imprisonment, both in civil and criminal cases, but the imprisonment is not unlawful in the sense of this rule, merely because the process or order under which the party is held, has been irregularly issued or is erroneous. Process which has been irregularly issued may be set aside by the court or officer by whom it was issued and erroneous judgments and orders may be reversed by a writ of error; the writ of habeas corpus has not been given for the purpose of reviewing the judgments or orders made by a court or judge or officer acting within their jurisdiction. To put it to such a use would be to convert it into a writ of error and confer upon every court which has authority to issue the writ, appellate jurisdiction over the orders and judgments of lower courts.

Ex Parte McCullough, 25 Cal. 97;
Ex Parte Gibson, 31 Cal. 619.

A person in custody under a judgment or order of a court of competent jurisdiction can not obtain his discharge on habeas

corpus on account of errors or irregularities, however gross the proceedings on which the judgment was found.

20 In re Williamson, 26 Pa. St. 9;
67 American Decisions, 37;
Ex Parte Mirande, 73 Cal. 365;
Ex Parte Lange, 18 Wallace, 163;
Ex Parte Parks, 93 U. S. 18;
Ex Parte Siebold, 100 U. S. 371.

The Supreme Court of the United States, in the case of Yarborough (101 U. S. 651) said:

"Errors of law committed in the Circuit Court which passes sentence upon prisoners, can not be inquired into in a proceeding on an application for habeas corpus to test the jurisdiction of the court which passed sentence.

Ex Parte Harding, 120 U. S. 782;
Ex Parte Wilson, 114 U. S. 417.

Basing our conclusions upon the facts in the present case and the law applicable thereto, we are of the opinion that the writ of habeas corpus should be denied and the petitioner returned to the custody of the respondent, with costs.

Thereafter, on March 25, 1912, notice of this decision was served on both parties.

Thereafter, on April 2, 1912, the following exception to the decision and petition for rehearing were filed by the Solicitor-General.

(Title of Court and Cause Omitted.)

Exception to Decision.

Comes now the Solicitor-General of the Philippine Islands in representation of the defendant in the above styled and numbered cause, and excepts to the decision of the court in said case

21 upon the ground that it is contrary to the law, in this:

1. That it disregards the express provisions of section 528 of Act No. 190, commonly known as the Code of Civil Procedure, and,

2. That it disregards the provisions of section 9 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill, and the local laws passed pursuant thereto relating to the jurisdiction of this court.

Defendant respectfully petitions the court to admit this exception as having been received and filed in due time.

Baguio, April 2, 1912.

(Sgd.) GEORGE R. HARVEY,
Solicitor-General, Attorney for Defendant.

(Title of Court and Cause Omitted.)

Petition for a Rehearing.

Comes now the Solicitor-General of the Philippine Islands in representation of the defendant in the above styled and numbered cause, and petitions the court to grant a rehearing in this cause, for the following reasons:

I.

The court has erred in entertaining jurisdiction in this case and issuing the writ of habeas corpus in favor of the plaintiff in disregard of the provisions of section 528 of Act No. 190, commonly known as the Code of Civil Procedure.

22

II.

The court has erred in its decision in this case in holding that the action of the Court of First Instance in denying to the plaintiff, Robert G. Shields, as the accused in a criminal case, at least two days to prepare for trial "is in effect the deprivation of the constitutional right of due process of law."

III.

The court has erred in its decision in this case in holding that the denial to the accused in a criminal case of the statutory right to at least two days to prepare for trial "either ousts the court of jurisdiction to enter a judgment of conviction, or it deprives the record of all legal virtue," and that "a judgment of conviction entered thereon is a nullity."

IV.

The court has erred in its decision in this case in holding that after the Court of First Instance committed the error of denying to the accused two days to prepare for trial there was a lack of jurisdiction in said Court of First Instance.

V.

The court has erred in its decision in holding in effect that the judgment of the Court of First Instance in said criminal case of the United States v. Robert G. Shields is a nullity.

VI.

The court has erred in its decision in holding that the action of the Court of First Instance in denying to the accused in
23 a criminal case a statutory right gives this court jurisdiction to release the accused on habeas corpus "by reason of the general revisory and supervisory powers which this court has in cases of this kind."

VII.

The court has erred in this case in issuing the writ of habeas corpus in favor of the plaintiff and ordering his discharge from custody under a commitment issued by the Court of First Instance of Manila in a criminal case wherein said Court of First Instance had appellate and final jurisdiction under the law.

VIII.

The court has erred in this case in entertaining jurisdiction of plaintiff's petition for the writ of habeas corpus in disregard of the provisions of section 9 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill, and the laws of the Philippine Islands passed pursuant thereto, fixing the jurisdiction and powers of the Supreme Court of the Philippine Islands.

Baguio, April 2, 1912.

(Sgd.) GEORGE R. HARVEY,
Solicitor-General, Attorney for Defendant.

Thereafter, on November 26, 1912, the following decision was rendered:

(Title of Court and Cause Omitted.)

MORELAND, *J.:*

This is a motion for a rehearing.

The defendant was brought before the Court of First In-
24 stance of the City of Manila for trial on a charge of larceny. He demanded two days in which to prepare for trial. It was refused him and he was forced to trial at once. He was convicted and sentenced. He applied for a writ of habeas corpus upon the ground that the judgment was void as a matter of law as he had been convicted without due process of law. The writ was allowed, and after a hearing given, and argument of counsel, the defendant was discharged under the decision of a majority of this court, Johnson, J., dissenting.

Section 30 of General Orders No. 58 provides that "after his plea the defendant shall be entitled, on demand, to at least two days in which to prepare for trial." The refusal of the time in which to prepare for trial and the consequent forcing of the defendant to his defense on the instant is, under the provisions of our law, equivalent, in our judgment, to the refusal of a legal hearing. It amounts in effect to a denial of a trial. It is an abrogation of that due process of law which is the country's embodied procedure, without which a defendant has, in law, no trial at all.

The courts must be the first to follow the law. Where the law is express and, therefore, clear, where it is imperative, and, therefore, with no discretion lodged anywhere, a court should never attempt to change it by interpretation or circumvent it by construction. The lawmakers realized fully the necessity of time to prepare for trial.

They well know that, without time to prepare, a trial was a mockery and a farce. They were fully informed that if they left that question to the discretion of the court, the trial itself would be rather a matter of favor than of right. It has never been the policy
25 of constitutions or of statutes to permit the inalienable right of trial to be left to the discretion of any man. The makers of laws and of constitutions clearly foresaw the unbearable conditions which would ultimately prevail if the right to a hearing should depend upon the discretion of the judge or of the court. The precedent sent out from this court, that, under the Code of Criminal Procedure of these Islands, the right to prepare for trial depended upon the discretion of the court, would disrupt established practice, would leave every person charged with crime in doubt as to rights of which no one can constitutionally deprive him. It is true that the trial courts of these Islands, following their usual custom of protecting the rights of all persons before them, would use that discretion with care and would never intentionally deprive any person of those privileges necessary to his complete defence. But that is not quite the point. The danger lies in this, that if the court should, in the exercise of that discretion, deprive the defendant of a hearing, his only remedy would be by appeal. He would not be able to take advantage of that quick and speedy remedy by habeas corpus which is the refuge of every man who is denied the right of hearing. He would *he* relegated to that slower and more tedious process of appeal, with the corresponding loss of freedom.

There is no procedure known to the Philippine Islands wherein a defendant is refused time to prepare for trial. There is no practice by which he is deprived of it. There is no law under which he can be denied it. On the contrary, the only procedure
26 known to us is one embodied in the imperative law wherein the accused is expressly given two days in which to prepare for trial. The only practice known is that which grants him the time referred to. But the recognized practice and procedure of a country is the due process of law of that country. It is because of that fact that the law relative to time in which to prepare for trial was made specific and imperative. Under that law no court has discretion. It cannot exercise judgment. It cannot interpret or construe. It can only obey. To obey that law is the only way of giving the defendant a trial. His rights are not satisfied with the exercise of a discretion upon the question; he is entitled to the time.

We are well aware that, if the court had been given the power to determine upon facts whether the time in question should be granted or not, that is, if the court had been given discretion in the matter, a very different question would have been presented. in such case due process of law would have been conserved whichever way the judgment of the court might have gone; for, in that event, the requirements of due process of law would have been satisfied with a decision either way. Due process of law includes a decision either way in a case where discretion is lodged with the court.

While there is no case at hand precisely in point, there are many analogous. It was held in the case of Callan v. Wilson, 127 U. S. 540, that the trial of a defendant without a jury violates the due process clause of the Constitution of the United States, and, if convicted, he is entitled to the benefit of the writ of habeas corpus.

We are of the opinion that it is just as much a failure of
27 due process of law to deprive a defendant of an opportunity to prepare for trial as it is to deprive him of the right to be tried before a jury. To deprive one wholly of time to prepare for trial is to deny him a trial altogether as that trial is defined by the law of the land.

In the case of Windsor v. McVeigh, 93 U. S. 274, which was an action for condemnation based on an alleged forfeiture, a summons was issued for the defendant and he was brought into court; but the appearance of the owner, when made, was stricken out and his right to appear was denied. In that case the court said, quoting Mr. Justice Swayne in 11 Wall. 267:

"The order in effect denied the respondent a hearing. It is alleged he was in the position of an alien enemy, and could have no locus standi in that forum. If assailed there, he could defend there. The liability and right are inseparable. A different result would be a blot upon our jurisprudence and civilization. We cannot hesitate or doubt on the subject. It would be contrary to the first principles of the social compact and of the right administration of justice."

Continuing the court said:

"Wherever one is assailed in his person or his property, there he may defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations. A sentence of a court pronounced against a party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal.

"That there must be notice to a party of some kind, actual or constructive, to a valid judgment affecting his rights, is admitted. Until notice is given, the court has no jurisdiction in any case to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject-matter. But notice is only for the purpose of affording the party an opportunity of being heard upon the claim or the charges made; it is a summons to him to appear and speak, if he has anything to say, why the judgment sought should not be rendered. A denial to a party of the benefit of a notice would be in effect to deny that he is entitled to
28 notice at all, and the sham and deceptive proceeding had better be omitted altogether. It would be like saying to a party, Appear, and you shall be heard; and, when he has appeared, saying, Your appearance shall not be recognized, and you shall not be heard. In the present case, the District Court not only in effect said this, but immediately added a decree of condemnation, reciting that the default of all persons had been duly entered. It is difficult to speak of a decree thus rendered with moderation; it was in fact a mere arbitrary edict, clothed in the form of a judicial sentence.

"The law is, and always has been, that whenever notice or citation is required, the party cited has the right to appear and be heard; and when the latter is denied, the former is ineffectual for any purpose. The denial to a party in such a case of the right to appear is in legal effect the recall of the citation to him."

* * * * * * *

"So a departure from established modes of procedure will often render the judgment void; thus, the sentence of a person charged with felony, upon conviction by the court, without the intervention of a jury, would be invalid for any purpose. The decree of a court of equity upon oral allegations, without written pleadings, would be an idle act, of no force beyond that of an advisory proceeding of the Chancellor. And the reason is, that the courts are not authorized to exert their power in that way.

"The doctrine stated by counsel is only correct when the court proceeds, after acquiring jurisdiction of the cause, according to the established modes governing the class to which the case belongs, and does not transcend, in the extent or character of its judgment, the law which is applicable to it. The statement of the doctrine by Mr. Justice Swayne, in the case of Cornell v. Williams, reported in the 20th of Wallace, is more accurate. 'The jurisdiction,' says the justice, 'having attached in the case, everything done within the power of that jurisdiction, when collaterally questioned, is held conclusive of the rights of the parties, unless impeached for fraud.' 20 Wall. 250.

"It was not within the power of the jurisdiction of the District Court to proceed with the case, so as to affect the rights of the owner after his appearance had been stricken out, and the benefit of the citation to him thus denied. For jurisdiction is the right to hear and determine; not to determine without hearing. And where, as in that case, no appearance was allowed, there could be no hearing or opportunity of being heard, and, therefore, could be no exercise of jurisdiction. By the act of the court, the respondent was excluded from its jurisdiction."

In the case of Hovey v. Elliott, 167 U. S. 409, the court
29 said:

"The fundamental conception of a court of justice is condemnation only after hearing. To say that courts have inherent power to deny all right to defend an action and to render decrees without any hearing whatever is, in the very nature of things, to convert the court exercising such an authority into an instrument of wrong and oppression, and hence to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends."

After quoting the case of McVeigh v. United States, 78 U. S., and Windsor v. McVeigh, 93 U. S., above referred to, the court continued:

"This language but expresses the most elementary conception of the judicial function. At common law no man was condemned without being afforded opportunity to be heard. Thus, Coke (2 Ins. 46), in commenting on the 29th chapter of Magna Charta,

says: 'No man shall be disseised, etc., unless it be by the lawful judgment; that is, verdict of his equals (that is, of men of his own condition), or by the law of the land (that is, to speak it once for all), by the due course and process of law.'"

* * * * * * *

"Can it be doubted that due process of law signifies a right to be heard in one's defense? If the legislative department of the government were to enact a statute conferring the right to condemn the citizen without any opportunity whatever of being heard, would it be pretended that such an enactment would not be violative of the Constitution? If this be true, as it undoubtedly is, how can it be said that the judicial department, the source and fountain of justice itself, has yet the authority to render lawful that which if done under express legislative sanction would be violative of the Constitution. If such power obtains, then the judicial department of the government sitting to uphold and enforce the Constitution is the only one possessing a power to disregard it. If such authority exists then in consequence of their establishment, to compel obedience to law and to enforce justice, courts possess the right to inflict the very wrongs which they were created to prevent."

In Capel v. Child, 2 Cromp. & J., 558, Lord Lyndhurst, C. B., at p. 574, said:

"A party has a right to be heard for the purpose of explaining his conduct; he has a right to call witnesses for the purpose of removing the impression made on the mind of the bishop; he has a right to be heard in his own defense. On consideration, then, it appears to me that, if the requisition of the bishop is to be considered a judgment, it is against every principle of justice that that judgment should be pronounced, not only without giving the party an opportunity of adducing evidence, but without giving him notice of the intention of the judge to proceed to pronounce the judgment."

In the case of Bonaker v. Evans, 16 Q. B. 162, the court said (p. 171):

"If it be the latter, then the bishop ought to have given the incumbent an opportunity of being heard before it was issued; for no proposition can be more clearly established than that a man cannot incur the loss of liberty or property for an offense by a judicial proceeding until he has had a fair opportunity of answering the charge against him, * * *."

In the case of Galpin v. Page, 85 U. S. 350, the court said:

"It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and can never be upheld where justice is justly administered."

Judge Cooley, in his Constitutional Limitations, at page 353, says:

"Perhaps no definition is more often quoted than that given by Mr. Webster in the Dartmouth College Case, 17 U. S. 4 Wheat 518 (4: 629): 'By the law of the land is most clearly intended the general law; a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunity under the protection of the general rules which govern society.'"

As we stated in our former opinion, a trial is a farce, indeed, is no trial at all, if the defendant be not given an opportunity
31 to prepare for trial—which is but another way of saying, "an opportunity to be heard." It is a mockery solemnly to assure him that he has a right to defend by himself and by his witnesses; and then say to him, when, in pursuance of the assurance he demands his trial, "You shall not have an opportunity to prepare for trial or to produce your witnesses." It goes without saying that, the right to a trial without any opportunity to prepare for it, is an idle, a fatuous thing.

The argument for the motion, however, does not discuss this question. It follows substantially the lines of the dissenting opinion filed in the original case and makes substantially the same points against the prevailing decision. Both the argument of counsel on the motion and that found in the dissenting opinion lose sight, in our opinion, of the real ground upon which the court based its decision. That being the case, the arguments, from one point of view, are of necessity beside the point.

The argument of counsel on the motion, as well as that contained in the dissenting opinion, seizes upon the fact of the initial jurisdiction of the Court of First Instance, that is, the jurisdiction of the court over the person of the defendant and the subject-matter of the action at the beginning of the trial, and makes it decisive of the case at bar. Indeed, the contention is made that where a court has once acquired jurisdiction of the person of the defendant and of the subject-matter of the motion, habeas corpus can never issue.

Says the dissenting opinion:

32 "Where an inferior court has jurisdiction of the cause and the person in a criminal suit, and no writ of error lies in this court, it will not, on habeas corpus, review the legality of the proceedings."

Says the brief of counsel on the motion:

"One authority after another was quoted in the original argument in this case to show that the commission of error by a court of final and exclusive jurisdiction cannot be reviewed or corrected in habeas corpus proceedings."

"The true principle of law is that errors committed by a trial court having final appellate jurisdiction of a criminal case do not deprive the court of jurisdiction, and habeas corpus will not lie to review or correct the action of such court."

"It is only upon the theory that the court of first instance had no jurisdiction over the defendant in the trial of said case, or over the subject-matter of the case, that this court could have granted the writ of habeas corpus."

The whole burden of these arguments is that the court of first instance had jurisdiction over the person of the defendant and the subject-matter of the action when the trial began. No attempt whatever is made to determine whether the court had jurisdiction at the close. That, which is the very crux of the whole case, is taken entirely for granted. No discussion has been presented or argument made as to whether or not the court had authority to enter the judgment which it did enter or to enforce it after it was entered, save in so far as the initial jurisdiction may be considered as such authority. No attempt is made to determine whether the defendant was deprived of a constitutional right, or what effect such deprivation, if any, has upon the case. The fact of the original jurisdiction is seized upon as the only point in the case worthy of consideration and upon it are based all of the contentions made against the original decision.

33 Nobody has denied the initial jurisdiction of the trial court. It has never been discussed or even questioned in this court. That jurisdiction has always been freely conceded. The decision of this court rested upon something which occurred after the jurisdiction referred to had attached and after the trial had begun. It rested upon the proposition that, while the trial court had jurisdiction in the first place, it either lost that jurisdiction during the progress of the trial, or so transcended its powers as to render its judgment void. Because a person had a peso in his pocket last week the conclusion does not necessarily follow that he has that peso in his pocket this week. Likewise, the fact that the trial court had jurisdiction at the time the trial began does not necessitate the conclusion that it had jurisdiction when the trial closed, or that it had authority or power to enter a particular judgment or to enforce it after it was entered. There are many ways in which a court may lose jurisdiction between the beginning of the trial and the close thereof; and there are many instances in the books where a court has, by its own acts, deprived the record of all legal efficacy and its judgment based thereon of all legal virtue.

This is what occurred in the case at bar. Having been brought before the bar of the court the defendant was driven to trial upon the moment in disregard of his demand for two days to prepare for trial made under section 30 of General Orders No. 58 which provides that "after his plea the defendant shall be entitled, on demand, to at least two days in which to prepare for trial." The denial of the

34 right to prepare for trial and the consequent forcing of the defendant to his defense without any time whatever for preparation is, under the provisions of our law, equivalent, in our judgment, to the refusal of a legal hearing. It amounts, in effect, to a complete denial of a trial. It was an abrogation of that due process of law which is the embodied procedure of the land, and without which a defendant has, in law, no trial at all.

We stated in our former decision that habeas corpus would lie in certain cases where constitutional rights were denied to the defendant, even though the court had jurisdiction at the beginning of the cause, or jurisdiction even to decide the very question the decision of which destroyed completely the power of the court to enter a judg-

ment of conviction or to enforce it if entered. We also stated that, where a defendant was denied due process of law in a criminal trial, the judgment of conviction resulting from such trial was either a judgment entered without jurisdiction or was "otherwise a nullity."

In the case of Windsor v. McVeigh, 93 U. S. 274, the court held that the doctrine that, where a court has once acquired jurisdiction, it has a right to decide every question which arises in the cause and its judgment, however erroneous, cannot be collaterally assailed, "is only correct when the court proceeds, after acquiring jurisdiction of the cause, according to the established modes governing the class to which the case belongs, and does not transcend, in the extent or character of its judgment, the law which is applicable to it." Concluding the argument in this case, Mr. Justice Field described
35 clearly the situation in the case before us, as well as that in the one with which he was dealing, when he said: "By the act of the court, the respondent was excluded from its jurisdiction."

To the same effect is the case of Cornell v. Williams, 20 Wall. 250, where the court said: "The jurisdiction having attached in the case, every thing done within the power of that jurisdiction, when collaterally questioned, is held conclusive of the rights of the parties, unless impeached for fraud."

The case of Hovey v. Elliott, 167 U. S. 409, substantially holds that to turn a defendant out of court after he has been duly brought in leaves the court without any more jurisdiction than it had before he was brought in, and that a judgment rendered without due process of law is void on collateral attack.

The right of a federal court to release by habeas corpus a person imprisoned under a judgment of a state court without due process of law is declared and exercised in numerous cases. (Callan v. Wilson, 127 U. S. 540; Re Lee Tong, 9 Sawy. 333; See also 6 Sawy. 410, 349; 10 Sawy. 532; 7 Sawy. 526; 11 Sawy. 447; 12 Sawy. 88, 379; 11 Sawy. 472; 2 Fed. Rep. 624; 40 Fed. Rep. 66, 71; Larkin v. Ryan, 70 Wis. 676; Re Doyle, 16 R. I. 537; Re Roberts, 4 Kan. App. 292; Re Durbon, 10 Mont. 147.)

In the case of Counselman v. Hitchcock, 142 U. S. 547, it was held substantially that a witness who has a constitutional right under the 5th Amendment to the Federal Constitution to decline to answer questions because the answers might tend to criminate him is entitled to discharge by habeas corpus if imprisoned for con-
36 tempt in refusing to answer. (Hackley v. Kelly, Abb. Pr., 150.) In this latter case the remedy was unquestioned but it was held that his constitutional rights had not been infringed.

It has been held in several cases that a person sentenced to imprisonment for an infamous crime without having been presented or indicted by a grand jury as required by the 5th Amendment to the Constitution of the United States is entitled to be discharged on habeas corpus. (Ex Parte Wilson, 114 U. S. 417; U. S. v. De Walt, 128 U. S. 393; Re Bain, 121 U. S. 1; Ex Parte McCluskey, 40 Fed. Rep. 71; Ex Parte Van Vranken, 47 Fed. Rep. 888.) In the cases of Ex Parte Wilson and Re Bain the constitutional requirement was declared to be jurisdictional.

In the case of Ex Parte Reynolds, 35 Tex. Crim. Rep. 437, it was held that one indicted by a grand jury composed of 14 instead of 12 as the Constitution required, was entitled to be released on habeas corpus.

The unconstitutionality of a statute which violated a bill of rights providing for a plain description of the crime and for protection against furnishing evidence to criminate one's self, and for the right to face witnesses and be heard personally by counsel, was held in Cunningham v. Ray, 63 N. H. 406, a good ground of habeas corpus.

As will be seen from these authorities, the mere fact that the court had jurisdiction of the parties and of the cause at the beginning is not necessarily vital in determining the question whether habeas corpus will lie to release a defendant imprisoned as a result of the trial. All of these cases, with the possible exception of
37 those relating to the lack of presentment by a grand jury, fully admit the jurisdiction of the court at the beginning of the trial.

In our previous decision we asserted that the deprivation of the constitutional right of a trial resulted either in a complete loss of jurisdiction or else rendered the judgment a nullity for some other reason; and that habeas corpus would lie in either case. This language is vigorously assailed in the argument of counsel, it being asserted that, under the statute, jurisdiction is the only ground upon which habeas corpus can issue and that the expression "a nullity for some other reason," or an equivalent expression, was unwarranted and unprecedented. In using these words we were but following the language used in the decisions of the Supreme Court of the United States.

In the case of Ex parte Siebold, 100 U. S. 371, 375, the court used this language:

"The only ground on which this court, or any court, without some special statute authorizing it, will give relief on habeas corpus to a prisoner under conviction and sentence of another court is the want of jurisdiction in such court over the person or the cause, or some other matter rendering its proceedings void."

Further on in the opinion the court said:

"The reason of this rule lies in the fact that a habeas corpus proceeding is a collateral attack of a civil nature to impeach the validity of a judgment or sentence of another court in a criminal proceeding, and it should, therefore, be limited to cases in which the judgment or sentence attacked is clearly void by reason of its having been rendered without jurisdiction, or by reason of the court's having exceeded its jurisdiction in the premises.

"It is said in Ex parte Royall, supra, that after a prisoner is convicted of a crime in the highest court of the State in which a conviction could be had, if such conviction was obtained in disregard or in violation of the rights secured to him by the Constitution and laws of the United States, two remedies are open to him for
38 relief in the federal courts—he may either take his writ of error from this court, under chapter 709 of the Revised Statutes, and have his case reexamined in that way on the question

of whether the state court has denied him any right, privilege or immunity guaranteed him by the Constitution and laws of the United States; or he may apply for a writ of habeas corpus to be discharged from custody under such conviction, on the ground that the state court had no jurisdiction of either his person or the offense charged against him, or had, for some reason, lost or exceeded its jurisdiction, so as to render its judgment a nullity; in which latter proceeding the federal courts could not review the action or rulings of the state court, which could be reviewed by this court upon a writ of error. But, as already stated, the Circuit Court has a discretion as to which of these remedies it will require the petitioner to adopt. This was expressly ruled in Ex parte Royall, supra, and has been repeatedly followed since that case."

In the case of Ex parte Lennon, 166 U. S. 548, the court used this language:

"It is only upon the theory that the proceedings and judgment of the court were nullities that we were authorized to reverse its action."

In U. S. v. Pridgeon, 153 U. S. 48, 62-63, the court said:

"Under a writ of habeas corpus the writ is addressed not to errors, but to the question whether the proceedings and the judgment rendered thereon are, for any reason, nullities, and unless it is affirmatively shown that the judgment or sentence, under which the petitioner is confined, is void, he is not entitled to his discharge."

Laying aside the questions springing from the various significations which the word "jurisdiction" may take on, we may say that it is a fact that the federal courts do issue writs of habeas corpus to release persons held under judgment of a court, not only when the judgment was without jurisdiction, but when it denies a right conferred by the Federal Constitution, even if the court had
39 jurisdiction to decide the case. This clearly appears from the decisions heretofore and hereinafter referred to, such as those where due process of law was refused, where there was a denial of equal protection of the law, and where there was imprisonment under an unconstitutional statute. (Ex parte Siebold, 100 U. S. 371; Ex parte Virginia, 100 U. S. 339; Yick Wo. v. Hopkins, 118 U. S. 356; Re Medley, 134 U. S. 160; Minnesota v. Barber, 136 U. S. 313; Re Savage, 134 U. S. 176; Asher v. Texas, 128 U. S. 129; Ex parte Royall, supra; Ex parte Wall, 48 Cal. 279; Ex parte Pitts, 35 Florida, 149; Re Frazee, 63 Mich. 393; Ex parte Rosenblatt, 19 Nev. 439; Re Paul, 94 N. Y. 497; Re Kline, 6 Ohio C. C. 215; Baxter v. Thomas, 4 Okla. 605; Ex parte Rollins, 80 Va. 314; Larkin v. Ryan, 70 Wis. 676; 39 L. R. A. 449.)

In regard to these cases is seems clear that the judgments held void were rendered by courts which had jurisdiction to try the issues involved and that their alleged want of jurisdiction was at most a want of authority or power to decide wrong a constitutional question which they had jurisdiction to decide right.

Be that as it may, however, it is certain that, in either case, i. e., whether there is a complete lack of jurisdiction, as that term is used by counsel on the motion, or whether the judgment is an absolute

nullity for the other reasons pointed out, the result to the judgment and to the person imprisoned is precisely the same. The judgment is void and the person is illegally restrained. The word "jurisdiction" as used in our statute is sufficiently broad to cover
40 "power" and "authority." So that whenever a court transcends its powers or exaggerates its authority to such an extent as to render its judgment absolutely void, habeas corpus will lie under our statute.

The motion is denied.

We Concur:
C. S. ARELLANO, *Chief Justice.*
A. C. CARSON, *Justice.*
GRANT T. TRENT, *Justice.*

JOHNSON, *J.*, dissenting:

Mr. Shields, the petitioner, had two trials in two different courts, before presenting the petition in the present case for the writ of habeas corpus. He makes no complaint now in this court, nor did he make any complaint in the Court of First Instance, that he had not been permitted to present in his defense, all of the proof which he had. He makes no allegation, even now, that he had some other proof which he desired to present.

The judgment of the Court of First Instance should stand affirmed.

Thereafter, on November 26, 1912, notices of this decision were served on both parties.

Thereafter, on November 30, 1912, the Solicitor-General, attorney for the respondent, filed the following exception to the decision.

(Title of Court and Cause Omitted.)

41 *Exception.*

Now comes the Solicitor-General of the Philippine Islands, in representation of the respondent in the above styled and numbered cause, and excepts to the decision of the court on the motion for rehearing in said cause, and,

Therefore, the respondent prays that this exception be received by the court as presented in due form and within the time required by law and the rules of the court.

Manila, November 30, 1912.

(Sgd.) GEO. R. HARVEY,
Solicitor-General, Attorney for Respondents.

Thereafter, on December 6, 1912, the following final judgment was rendered.

(Title of Court and Cause Omitted.)

Judgment.

This Court having regularly acquired jurisdiction for the trial of the above entitled cause, submitted by both parties for decision, after consideration thereof by the court upon the record, its decision and order for judgment having been filed on March 25, 1912.

By virtue thereof, the writ of habeas corpus prayed for by the petitioner is hereby granted, and it is ordered that the accused be immediately set at liberty.

(Sgd.) V. ALBERT,
Clerk Supreme Court P. I.

42 Thereafter, on December 9, 1912, the following exception to the final judgment was filed by the attorney for the respondent.

(Title of Court and Cause Omitted.)

Exception.

Now comes the Solicitor-General of the Philippine Islands, in representation of the respondents in the above styled and numbered cause, and excepts to the final judgment and decree of the court entered in this case on the 6th day of December, 1912, and gives notice of his intention to file within due time a petition for appeal to the Supreme Court of the United States; and,

Therefore, the respondents pray that this exception be received by the court as presented in due form and within the time required by law and the rules of this court.

Manlia, December 7, 1912.

(Sgd.) GEO. R. HARVEY,
Solicitor-General, Attorney for Respondents.

Received copy this 7th day of December 1912.
HIXSON & ZOOK,
By J. C. HIXSON,
Attorneys for Defendant.
G. E. CAMPBELL,
Att'y for Petitioner.

Thereafter, on December 10, 1912, the following petition for appeal to the Supreme Court of the United States was filed by the attorney for respondents and appellants.

43 (Title of Court and Cause Omitted.)

Petition for Appeal to the Supreme Court of the United States.

To the Honorable Supreme Court of the Philippine Islands:

It appearing in the above styled cause that on the 4th day of January, 1911, the petitioner, Robert G. Shields, filed in this court

a petition against José McMicking, Sheriff of Manila, praying that a writ of habeas corpus issue in his favor upon the ground that he was being illegally deprived of his liberty by virtue of a judgment dictated by the Honorable Charles S. Lobingier, Judge of the Court of First Instance of Manila, in that said Court of First Instance denied the petitioner the due process of law guaranteed by the Philippine Bill; that is to say, that on December 21, 1910, the petitioner appealed to the Court of First Instance of Manila from the judgment of the municipal court of Manila finding him guilty of the crime of theft, and on December 23, 1910, was notified that his said cause would be tried on the 24th of said month at 10 o'clock in the morning; that when said case was called on said date and at said hour the petitioner, upon hearing the complaint, asked time to answer the same, which was denied by the court, and that the court ordered the clerk to enter a plea of not guilty; that the attorney for the petitioner also asked time to prepare the defense, which was also denied by said court, to which the attorney for the petitioner excepted and asked that his request and his exception to the action of the court be made of record; and that upon the foregoing allegations the petitioner prayed the Supreme Court to
44 issue a writ of habeas corpus in his favor annulling the judgment dictated by the Court of First Instance as being contrary to law, and that the petitioner be placed at liberty;

It further appearing that on the 5th day of January, 1911, the clerk of this Supreme Court issued an order of this court to the sheriff of the city of Manila, or to the person having custody of the petitioner, directing him to appear before this court on the 6th day of said month, at 9 o'clock in the morning, and show cause why the writ of habeas corpus petitioned by Robert G. Shields should not be issued;

It further appearing that on the 6th day of January, 1911, the sheriff of Manila made return to said order of the court and showed that said petitioner was not in the custody or under the control of said sheriff because the said petitioner, by virtue of the judgment dictated by the Honorable Charles S. Lobingier, Judge of the Court of First Instance of Manila, in criminal case No. 6911 against the said petitioner for theft, was sentenced to the penalty of four months and one day of arresto mayor, and a commitment was issued by the judge of said court, and that the said Robert G. Shields was, by virtue of said commitment, delivered to the Director of Prisons on the 4th day of January, 1911;

It further appearing that on the 6th day of January, 1911, the Director of Prisons also made return to said order of this court, stating that the said Robert G. Shields was then in the custody and under the control of the Director of Prisons by virtue of a certain commitment issued by the Honorable Charles S. Lobingier,
45 Judge of the Court of First Instance of Manila, and was serving a sentence of four months and one day of arresto mayor under a judgment of said Court of First Instance of Manila in criminal case No. 6911 against the said Robert G. Shields for the crime of theft;

I further appearing that on the 13th day of January, 1911, this court ordered the release of the petitioner from the custody of the Director of Prisons under a bond in the sum of P500.00, Philippine currency;

It further appearing that on the 13th day of January, 1911, this court rendered its decision in this cause, wherein and whereby it was held by a majority of this court that the denial to the petitioner, as the accused in a criminal case, of the time to prepare for trial "is in effect the deprivation of the constitutional right to due process of law," and "that habeas corpus ought to lie by reason of the general revisory and supervisory powers which this court has in cases of this kind," to which decision an exception was duly filed;

It further appearing that on the 2nd day of April, 1912, the respondents filed a motion for a rehearing in this cause, which motion was by this court overruled on the 26th day of November, 1912, to which action of the court an exception was duly filed;

It further appearing that on the 6th day of December, 1912, this court rendered its final judgment or decree in this cause, wherein it was ordered, adjudged, and decreed by the court that the writ of habeas corpus issue as prayed for and that the petitioner be immediately given his liberty, to which judgment and decree of the court an exception was duly filed;

46 The above named respondents conceiving themselves aggrieved by the decision of this honorable court rendered on the 25th day of March, 1912, and by the decision of the court on the 26th day of November, 1912, overruling respondents' motion for a rehearing, and by the said decree of the court entered on the 6th day of December, 1912, do hereby appeal therefrom to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herewith; and the respondents pray that this appeal be allowed, and that a true copy of the record and of the assignment of errors and of all proceedings in the case (in accordance with the accompanying written stipulation of counsel in this cause), duly authenticated by the clerk of this court, be sent to the Supreme Court of the United States at Washington, District of Columbia;

Wherefore, the respondents pray this honorable court to appoint a date for a hearing to be had on this petition, as soon as practicable, and to fix the amount of bond that the petitioner and appellee in this cause shall give to abide any decision or judgment that may be rendered against him by the Supreme Court of the United States or by this Supreme Court; and respondents further pray for such other and further orders and proceedings as may be just and equitable in the premises.

Manila, P. I., December 9, 1912.

(Sgd.) GEO. R. HARVEY,
Solicitor-General for the Philippine Islands,
Attorney for Respondents and Appellants.

Received copy this 9th day of Dec. 1912.

ELLSWORTH E. ZOOK,
Attorney for Petitioner.

47 Thereafter, on December 10, 1912, the following assignment of errors was filed by the attorney for respondents.

(Title of Court and Cause Omitted.)

Assignment of Errors.

The respondents, by and through the Solicitor-General for the Philippine Islands, now appear and except to the decision, orders, and final decree by this honorable court made and entered in favor of the petitioner in the above styled and numbered cause, and assign the following errors as having been committed by this court in said cause:

I.

The Supreme Court of the Philippine Islands has erred in entertaining jurisdiction of the petitioner's application for the writ of habeas corpus, and issuing the writ in favor of the petitioner in disregard of the provisions of section 528 of Act No. 190, commonly known as the Code of Civil Procedure of the Philippine Islands.

II.

The Supreme Court of the Philippine Islands has erred in entertaining jurisdiction upon petitioner's application for the writ of habeas corpus in disregard of the provisions of section 9 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill, and the laws of the Philippine Islands thereby approved, ratified, and confirmed, and the laws of the Philippine Islands passed pursuant thereto fixing the jurisdiction and powers of the Supreme Court of the Philippine Islands.

48 III.

The Supreme Court of the Philippine Islands has erred in holding in its decision in this cause to the effect that the writ of habeas corpus could be granted upon any other ground than lack of jurisdiction of the trial court and in attempting in its decision upon the motion for a rehearing to give a new significance to the term "jurisdiction."

IV.

The Supreme Court of the Philippine Islands has erred in assuming in its decision on the motion for a rehearing, without allegation or proof, that the petitioner was deprived of time to prepare for trial, was "not given an opportunity to prepare for trial" and was forced "to his defense on the instant" and "without any time whatever for preparation."

V.

The Supreme Court of the Philippine Islands has erred in its decision in this cause in holding that the action of the Court of

First Instance in denying to the petitioner, as the accused in a criminal case, the statutory period of time to prepare for trial "is in effect the deprivation of the constitutional right to due process of law."

VI.

The Supreme Court of the Philippine Islands has erred in its decision in this cause in holding that the denial to the accused in a criminal case of the statutory period of time to prepare for trial "either ousts the court of jurisdiction to enter a judgment of conviction, or it deprives the record of all legal virtue," and in holding that "a judgment of conviction entered thereon is a nullity."

49

VII.

The Supreme Court of the Philippine Islands has erred in its decision in this cause in holding that after the Court of First Instance denied the accused time to prepare for trial there was a lack of jurisdiction in said Court of First Instance to proceed with the trial of said cause and render judgment therein.

VIII.

The Supreme Court of the Philippine Islands has erred in its decision in this cause in holding that the action of the Court of First Instance of Manila in depriving the accused in a criminal case of a statutory right gives said Supreme Court jurisdiction to release the accused on habeas corpus "by reason of the general revisory and supervisory powers which this court has in cases of this kind."

IX.

The Supreme Court of the Philippine Islands has erred in this cause in releasing the petitioner under bail from imprisonment imposed by a court of final jurisdiction, and in issuing the writ of habeas corpus and finally relieving the petitioner of all liability to serve sentence under a commitment duly issued by the Court of First Instance of Manila in a criminal case against the petitioner wherein said Court of First Instance had under the law appellate and final jurisdiction.

X.

The Supreme Court of the Philippine Islands has erred in its decision and judgment in this cause in holding that the
50 Court of First Instance of Manila lost jurisdiction over the person of the accused and over the subject-matter of the criminal case against him by denying him at least two days to prepare for trial, when it was not alleged or claimed by the petitioner that the court of First Instance was ever at any time without jurisdiction over the person of the accused or over the subject-matter of said criminal case, and when it was not alleged by the petitioner that

he or his attorney had asked for two days to prepare for trial, and when it was not alleged that the petitioner did not have the time to prepare for trial or that he was not given the necessary time to produce his witnesses, or that he had any other witnesses or could have produced any other evidence had the court granted further time, or that he had been in any manner prejudiced by the action of the Court of First Instance.

XI.

The Supreme Court of the Philippine Islands has erred in this cause in its order overruling the motion for a rehearing in assuming, without allegation or proof, that the Court of First Instance of Manila denied the accused a hearing, and in holding, under the facts of this case, that if the Court of First Instance should deprive the defendant of a hearing "He would not be able to take advantage of that quick and speedy remedy by habeas corpus which is the refuge of every man who is denied the right of hearing," and that "He would be relegated to that slower and more tedious process of appeal, with the corresponding loss of freedom."

XII.

51 The Supreme Court of the Philippine Islands has erred in its order overruling the motion for a rehearing in this cause in holding, under the facts of this case, "that it is just as much a failure of due process of law to deprive a defendant of an opportunity to prepare for trial as it is to deprive him of the right to be tried before a jury," where the law provides for a trial by jury.

XIII.

The Supreme Court of the Philippine Islands has erred in its order overruling the motion for a rehearing in this cause in holding, without the necessary allegations or proofs, that the action of the Court of First Instance denied the accused the right to prepare for trial, and in holding that said court forced the defendant to his defense "without any time whatever for preparation," and that "It was an abrogation of that due process of law which is the embodied procedure of the land, and without which a defendant has, in law, no trial at all."

XIV.

The Supreme Court of the Philippine Islands has erred in its order overruling the motion for a rehearing in this cause in assuming as facts that the petitioner asked for two days to prepare for trial, and that the court refused him the right to produce his witnesses, and in holding that "It is a mockery solemnly to assure him (the accused) that he has a right to defend by himself and by his witnesses; and then say to him, when, in pursuance of the assurance, he demands his trial,—'You shall not have an opportunity to prepare for trial or to produce your witnesses,'." and in applying such a doctrine to the facts of this case.

52 XV.

The Supreme Court of the Philippine Islands has erred in its order overruling the motion for a rehearing in holding that, "while the trial court had jurisdiction in the first place, it either lost that jurisdiction during the progress of the trial, or so transcended its powers as to render its judgment void."

XVI.

The Supreme Court of the Philippine Islands has erred in its order overruling the motion for a rehearing in applying the doctrines of American cases in jurisdictions having no such statutory prohibition as that contained in section 528 of the Philippine Code of Civil Procedure.

XVII.

The Supreme Court of the Philippine Islands has erred in its order overruling the motion for a rehearing in this cause in holding in effect that the Court of First Instance of Manila transcended its powers and exaggerated its authority in the trial of the criminal case against the petitioner to such an extent as to render its judgment absolutely void, and that, therefore, habeas corpus will lie under our statute.

XVIII.

The Supreme Court of the Philippine Islands has erred in this cause in overruling the motion for a rehearing and in ordering judgment in favor of the petitioner.

XIX.

The Supreme Court of the Philippine Islands has erred in its final judgment in this cause in granting the writ of habeas
53 corpus and ordering that the petitioner be immediately given his liberty.

Manila, P. I., December 9, 1912.

(Sgd.) GEO. R. HARVEY,
Solicitor-General, Attorney for Respondents.

Received copy this 9th day of Dec. 1912.
ELLSWORTH E. ZOOK,
Attorney for Petitioner.
34 Escolta.

Thereafter, on December 14, 1912, the Supreme Court adopted the following resolution.

The Court granted the petition of the Solicitor-General on behalf of the respondents and appellants in the matter of Robert G. Shields v. José McMicking, Sheriff of Manila, et al. No. 6693, to appeal the case to the Supreme Court of the United States.

V. A.

54 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 6693.

ROBERT G. SCHIELDS, Petitioner and Appellee,
vs.
JOSE MCMICKING, Sheriff of Manila, et al., Respondents and Appellants.

Stipulation of Counsel.

It is hereby stipulated by and between the undersigned, attorneys in representation of the parties to this cause, that the portions of the record of this cause which shall constitute the transcript of record on appeal to the Supreme Court of the United States may consist of the following:

1. The petition for the writ of habeas corpus;
2. The order of the court to the Sheriff of the City of Manila or to the person having custody of the petitioner to appear before the Supreme Court and show cause why the writ of habeas corpus should not issue as prayed for;
3. The return of the Director of Prisons and exhibits "A" and "B" attached to said return;
4. The return of the Sheriff of the City of Manila;
5. The communication of January 13, 1911, from the Clerk of the Supreme Court to the Director of Prisons, ordering the
55 release of the petitioner under bond in the sum of P500.00.
6. The decision of this Supreme Court;
7. The dissenting opinion signed by Mr. Justice Johnson;
8. The exception to that decision;
9. The petition for a rehearing;
10. The decision of this Supreme Court overruling the motion for a rehearing;
11. The dissenting opinion signed by Mr. Justice Johnson;
12. The exception to the decision of the court overruling the motion for a rehearing;
13. The final judgment of this Supreme Court;
14. The exception to the final judgment;
15. The petition for appeal to the Supreme Court of the United States;
16. The assignment of errors filed by the respondents and appellants;
17. The order of the court allowing appeal to the Supreme Court of the United States.

Manila, P. I., December 9, 1912.

(Sgd.) ELLSWORTH E. ZOOK,
Attorney for Petitioner.

(Sgd.) GEO. R. HARVEY,
Solicitor-General, Attorney for Respondents.

56 In the Supreme Court of the Philippine Islands.

1. Vicente Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in a certain cause pending in said Supreme Court, wherein Robert G. Schields is plaintiff and appellee and José McMicking, is defendant and appellant, R. G. No. 6693, a final decree was rendered by said Supreme Court on the 6th day of December, A. D. 1912, in favor of the said appellee, and against the said appellant, and that on the 14th day of December, A. D. 1912, said appellant prayed an appeal to the Supreme Court of the United States, which was allowed.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at Manila, Philippine Islands, this 30th day of March, A. D. 1913.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk Supreme Court P. I.

Rm.

57 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Robert G. Schields, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, to be held at the city of Washington in the District of Columbia, within one hundred twenty (120) days from the date of this writ, pursuant to an appeal filed in the clerk's office of the Supreme Court of the Philippine Islands, wherein Robert G. Schields is plaintiff and appellee, and José McMicking is defendant and appellant, to show cause, if any there be, why judgment in said appeal should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States of America this 27th day of March, 1913.

[Seal Corte Suprema, Islas Filipinas.]

SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

Attest:
V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

Service of the above citation is hereby acknowledged this 31st day of March, 1913.

ELLSWORTH E. ZOOK,
Attorney for Appellee.

34 Escolta, Manila, P. I.

58 THE UNITED STATES OF AMERICA:

The Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing fifty five (55) pages of typewritten matter contain a true and correct translation and transcript of the record and proceedings had in the Supreme Court of the Philippine Islands in the case of Robert G. Schields, Plaintiff and Appellee, versus José McMicking, Defendant and Appellant.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court this 18th day of June, A. D. 1913.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk Supreme Court P. I.

Rm.

59 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 6693.

ROBERT G. SCHIELDS, Plaintiff and Appellee,
versus
JOSE MCMICKING, Defendant and Appellant.

Judgment.

December 6, 1912.

This Court having regularly acquired jurisdiction for the trial of the above entitled cause, submitted by both parties for decision, after consideration thereof by the court upon the record, its decision and order for judgment having been filed on March 25, 1912.

By virtue thereof, the writ of habeas corpus prayed for by the petitioner is hereby granted, and it is ordered that the accused be immediately set at liberty.

[Seal Corte Suprema, Islas Filipinas.]

(Sgd.) V. ALBERT,
Clerk Supreme Court P. I.

I hereby certify that the foregoing is a true and correct copy of its original filed in my office.

V. ALBERT,
Clerk Supreme Court P. I.

Endorsed on cover: File No. 23,916. Philippine Islands Supreme Court. Term No. 765. Jose McMicking, appellant, vs. Robert G. Schields. Filed October 23d, 1913. File No. 23,916.

[redacted]

INDEX.

AUTHORITIES CITED.

In the Supreme Court of the United States.

OCTOBER TERM, 1914.

JOSE MCMICKING, APPELLANT,
v.
ROBERT G. SCHIELDS, APPELLEE. } No. 285.

ON APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

The case is here on appeal by the Director of Prisons of the Philippine Islands from a final order of the Supreme Court of the Philippine Islands, hereinafter referred to as the "supreme court," in a habeas corpus proceeding discharging the appellee from the custody of appellant, who, as Director of Prisons, held appellee by virtue of a commitment issued upon a judgment of conviction for larceny and sentence of

four months and one day of *arresto mayor* by the Court of First Instance of the City of Manila.

The petitioner, hereinafter called the "appellee," who is an American negro, was arrested under a complaint filed in the Municipal Court of the City of Manila December 1, 1910, charging him with the crime of *hurto* (larceny), consisting in the felonious taking of certain drugs and medicines belonging to the Philippine Bureau of Agriculture, where the defendant was employed, and selling the same in a drug store which he was incidentally operating in another part of the City of Manila. In said Municipal Court he answered the complaint by pleading "not guilty," was given time to prepare for trial by being allowed one or more continuances, and, after all, had to be called into court by a bench warrant. Finally, however, he was tried and convicted in the Municipal Court, and immediately after, to wit, on December 21, 1910, lodged an appeal in the Court of First Instance of Manila. Appellee had, therefore, more than three weeks for preparation before his trial in said court (Rec. 6). The Court of First Instance, at the time nearing the close of its term, was naturally desirous of disposing of pending business before adjournment. It is a fair inference from the record that appellee maneuvered to get the case over the term. The court ordered the case placed on the calendar for the last day of the term, thus giving appellee all the time possible before its close. In addition, he was given one full day's notice of the

time of trial, although no such notice is required by rule of court or by statute. According to local practice, the prosecution did not file a new complaint in the Court of First Instance, but appellee was tried on the identical complaint filed in the Municipal Court three weeks before, and upon which he had there been once tried.

At the beginning of the trial in the Court of First Instance appellee asked for further time to prepare, and relied upon certain sections (19 and 30) of General Order No. 58 as entitling him to the right to further time. The trial court held that these sections were not applicable to a case appealed from a municipal court, and in the exercise of its discretion denied the request. Non-compliance with said section 30, as assumed by the supreme court, is the basis of its action on the habeas corpus proceeding. Any question of non-compliance with section 19 would, of course, be disposed of on the same principles. Section 30 is as follows:

> After his plea the defendant shall be entitled, on demand, to at least two days in which to prepare for trial.

The request being thus disposed of, the trial court regularly proceeded upon the plea of "not guilty;" appellee was given, and availed himself of, opportunity to call all the witnesses he desired (Rec. 6). He did not, however, seek to contradict the showing of the Government that he did take the medicines.

His defense was a technical one, not raising a question of fact. After hearing the evidence and the arguments, the trial court rendered a judgment of conviction and sentenced appellee to four months and one day of *arresto mayor*.

On December 27, 1910, appellee presented to the supreme court an application for a writ of habeas corpus, claiming that his imprisonment was illegal "because the said Court of First Instance denied him the due process of law guaranteed by the Philippine Bill of Rights," assigning illegalities as follows:

> That on December 21, 1910, the petitioner appealed from the judgment of the lower court sentencing him for the crime of theft.
>
> That on December 23 the petitioner, without having been asked to answer the complaint, was notified that the case would be heard at 10 a. m. on the 24th.
>
> When the case was called at 10 a. m., on the 24th, and while the petitioner was arraigned, he asked for time in which to answer the complaint, which request was denied by the court, who ordered the clerk to enter on the record that the petitioner pleaded not guilty to the complaint.
>
> Thereupon the petitioner's attorneys also asked for time in which to prepare a defense, which petition was denied by the same court, to which ruling the petitioner's attorneys excepted and asked that the exception, together with the requests of the petitioner which had been denied, be entered on the record. (Rec. 2).

Appellant answered the rule to show cause that the petitioner was in his custody in Bilibid Prison by an order of commitment issued by the judge of the Court of First Instance of Manila, serving a sentence of four months and one day by virtue of a judgment of a competent tribunal, the said court of First Instance, imposed in a criminal action against petitioner for the crime of theft, and prayed a denial of the writ. Copies of the commitment, judgment and sentence of the trial court were attached to and made a part of the return (Rec. 2, 3).

Such was the case before the supreme court. No evidence was offered or sought in support of the petition. Instead of passing directly on the petition, the supreme court, on January 13, 1911, released the defendant on bond and thereafter, for reasons unknown, let the application lie for nearly *fifteen months* before disposing of it, when on March 25, 1912, the court ordered the petitioner's release. Subsequently the Government filed a motion for a re-hearing, which was denied (Rec. 14).

The supreme court based its decision upon the following grounds: (a) that the denial to the accused of the statutory time to prepare for trial was a deprivation of the constitutional right of due process of law; (b) that the denial of this constitutional right either ousted the jurisdiction of the trial court or deprived the record of all legal virtue, with the result that the judgment of conviction was a nullity; and (c) that habeas corpus was the only efficient and, therefore,

a proper remedy, and that the supreme court had jurisdiction to issue the writ by reason of "its general revisory and supervisory powers which it has in cases of this kind" (Rec. 8, 14–24).

For the convenience of the Court we print as appendices so much of General Order No. 58 and of the statutes of the Philippines relating to the jurisdiction of the insular supreme court in habeas corpus cases as is believed to be necessary to an understanding of this case.

ASSIGNMENTS OF ERROR.

The numerous assignments of error (Rec. 28–31) may be compressed within the limits of four propositions:

1. The supreme court erred in that it decided the cause upon a misapprehension and an unwarranted assumption as to what took place in the trial court.

2. The supreme court erred in holding that the action of the trial court constituted a denial of due process of law guaranteed by the Philippine Bill of Rights.

3. The supreme court erred in holding that the action of the trial court "either ousts the court of jurisdiction to enter a judgment of conviction, or it deprives the record of all legal virtue" and that "a judgment of conviction entered thereon is a nullity."

4. The supreme court erred in holding that it had jurisdiction of the cause.

ARGUMENT.

We shall argue:

I. This Court has jurisdiction of this appeal.

II. The supreme court discussed and decided this cause and released the prisoner upon a misapprehension and an unwarranted assumption as to what took place in the trial court.

III. The judgment of conviction was not void; it was, at most, only voidable for error or irregularity of procedure.

IV. Habeas corpus was not the proper remedy, and the supreme court not only abused the writ but violated its own jurisdictional power.

V. If mere procedural error is to be remedied through habeas corpus, as was attempted in this cause, the whole course of criminal justice in the Philippine Islands may be deranged, or even defeated.

I.

THIS COURT HAS JURISDICTION OF THIS APPEAL.

Section 10 of the Philippine Organic Act, approved July 1, 1902 (32 Stat. 691, 695), provides:

> That the Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify or affirm the final judgments and decrees of the Supreme Court of the Philippine Islands in all actions, cases, causes

> and proceedings now pending therein or hereafter determined thereby, in which the Constitution or any statute, treaty, title, right or privilege of the United States is involved * * *; and such final judgments or decrees may and can be reviewed, revised, reversed, modified or affirmed by said Supreme Court of the United States on appeal or writ of error by the party aggrieved, in the same manner, under the same regulations, and by the same procedure, as far as applicable, as are final judgments and decrees of the Circuit Courts of the United States.

The sole basis of the application for the writ in this case was the averment in appellee's petition that the "Court of First Instance denied him the due process of law guaranteed by the Philippine Bill of Rights." The supreme court released him upon the express ground that there had been "a denial of the constitutional right of due process of law" (Rec. 8, 14). "The Philippine Bill of Rights" is the term commonly applied to section 5 of said Organic Act, which, so far as pertinent here, is as follows:

> That no law shall be enacted in said islands which shall deprive any person of life, liberty or property without due process of law, or deny to any person therein the equal protection of the law. * * *
>
> That no person shall be held to answer for a criminal offense without due process of law. * * *.

The final order in this proceeding is a final judgment and decree of the Supreme Court of the Philippine Islands in a cause or proceeding determined thereby in which a statute of the United States is involved, and the question is, therefore, one over which the court has jurisdiction. Appeal is the proper method of obtaining a review in this court of a final order of the Supreme Court of the Philippines in a *habeas corpus* case. *Fisher* v. *Baker*, 203 U. S. 180.

II.

THE SUPREME COURT DISCUSSED AND DECIDED THE CAUSE AND RELEASED THE PRISONER UPON A MISAPPREHENSION AND AN UNWARRANTED ASSUMPTION AS TO WHAT TOOK PLACE IN THE TRIAL COURT.

The facts as well as the law are before this court for review. *De La Rama* v. *De La Rama*, 201 U. S. 309. Section 30, General Order No. 58, promulgated from the office of the Military Governor April 23, 1900, during the days of military occupation, and still forming the basis of the Philippine Code of Criminal Procedure, provides that "after his plea the defendant shall be entitled, on demand, to at least two days in which to prepare for trial." The supreme court assumed this section to be applicable to a case tried in the Court of First Instance on appeal from a municipal court, and further assumed, contrary to the facts, that the appellee demanded and

was refused the two days in which to prepare for trial. This is the crux of the court's decision. Both opinions (Rec. 8, 14) repeat over and over again the assertion of "denial to the accused of the time, at least two days, to prepare for trial;" "he demanded two days in which to prepare for trial, it was refused him and he was forced to trial at once;" "the consequent forcing of the defendant to his defense on the instant;" "to deprive a defendant of an opportunity to prepare for trial, etc.;" "to deprive one wholly of time to prepare for trial, etc.;" "not given an opportunity to prepare for trial;" "the defendant was driven to trial upon the moment in disregard of his demand for two days to prepare for trial."

Now, assuming for the present that said section 30 is applicable to a case appealed from a municipal court to a court of first instance, nevertheless

1. Appellee does not even allege a demand for two days to prepare for trial.

He merely avers that he asked for time in which to prepare a defense. He does not even hint how much time he asked for. For aught that appears he may have asked for ten days, or for thirty days. Surely it cannot be claimed that an accused may demand an unreasonable period and, in case it is not granted, claim that he was deprived of all. An allowance of two days under said section is not an unconditional right; it is a privilege granted only "on demand." In order to complain of its denial, he must

show an actual demand for the two days. Not only did appellee fail to show such a demand, but he did not even allege it. The majority opinion, recognizing the necessity for such a demand, supplies this fatal omission in pleading and proof by simply assuming it.

2. No proof was offered or sought in support of the petition.

Even if the accused had alleged the demand of two days to prepare for trial it would have availed him nothing in the absence of a showing on the record or some competent proof that he actually made it. Yet he offered no proof, and the supreme court neglected to require it. Hence we have the rather unique spectacle of an application for a writ of habeas corpus being made and granted upon a question of fact *dehors* the record without the introduction of a word of evidence. All the assertions of the supreme court above quoted are therefore without any competent support. The court not only took the petitioner's naked averments as true, but assumed as true what the petition failed to allege or the record to show.

Nor can any of these fundamental assumptions be aided by the recital in the trial court's opinion that "at the beginning of the trial the defendant asked for further time to prepare, etc." Here, again, it does not appear how much time was asked, and much less could a demand for two days be inferred. Indeed, the recital that *further time* was asked indicates that

the accused had already been given the required amount and had then asked for more. Besides, it is too late to make the demand at the beginning of the trial. Said section 30 plainly contemplates a demand before the trial opens, for then the proceedings are governed by sections 31 *et seq.*, which make no provision and leave no place for such demand.

3. The record shows that appellee enjoyed all the time allowed under the Philippine practice.

The trial court's judgment was made part of the record upon which the application for the writ was submitted (Rec. 4–7). From that judgment it appears that the complaint upon which appellee was tried had been filed in the Municipal Court of Manila as early as December 1, 1910; that appellee answered this complaint (evidently without any demand for time) and pleaded not guilty; that thereafter there were one or more continuances, and finally appellee had to be called into the Municipal Court by bench warrant. Appellee has seen fit not to disclose the date of his trial in the Municipal Court, but it was evidently not long before December 21, for he alleges that on that date "the petitioner appealed." In other words, he had been allowed about three weeks to prepare for trial in the Municipal Court; had answered the complaint; had been granted one or more continuances, and still had to be called into the Municipal Court by bench warrant. Even after all of this he was given one full day to prepare

for trial on the same complaint in the Court of First Instance to which he had brought the case, whose jurisdiction he had voluntarily invoked, and for whose disposition he should have been, and evidently was, ready, so far as he ever would be. Then, too, it was not claimed that appellee could have produced any further testimony even if the case had been postponed. On the contrary, it appears that he fully presented his defense and called one witness other than those who had testified in the court below (Rec. 6). In short, the point which monopolizes the opinion of the supreme court has no basis in fact; and the case discussed by that court is, in effect, an imaginary one.

III.

THE JUDGMENT OF CONVICTION WAS NOT VOID; IT WAS AT MOST ONLY VOIDABLE FOR ERROR OR IRREGULARITY OF PROCEDURE.

A judgment is not subject to collateral attack by *habeas corpus* unless it is clearly void by reason of its having been rendered by a court without jurisdiction or by reason of the court's having exceeded its jurisdiction. Whether the judgment is absolutely void or not is merely a question of jurisdiction. *Ex parte Tobias Watkins*, 3 Pet. 202; *Re Frederich*, 149 U. S. 70; *Matter of Moran*, 203 U. S. 102; *Ex parte Harding*, 120 U. S. 782; *Re Wilson*, 140 U. S. 575.

A. THE TRIAL COURT HAD AND RETAINED COMPLETE JURISDICTION.

It is admitted that the Court of First Instance is a court of general criminal jurisdiction, and therefore had jurisdiction of the subject matter and the accused, and authority to render the particular verdict and judgment, unless, as the supreme court holds, it so exceeded its jurisdiction in the single instance of denying the request of the appellee that the trial, verdict and judgment became absolute nullities. The supreme court reasons that inasmuch as said section 30 requires on demand two days for preparation, and inasmuch as it was designed to effectuate the guarantee of due process of law, a disregard of the requirement of said section constitutes a denial of due process of law required by section 5 of the Organic Act, and that such denial either "ousts the court of jurisdiction to enter a judgment of conviction or it deprives the record of all legal virtue and the judgment of conviction entered thereon is a nullity." That is, the supreme court reasons, not that the trial was without due process of law because without jurisdiction, but that it was without jurisdiction because without due process of law. The court therefore tests the jurisdiction of the trial court by a rather abstract conception of the requirement of due process of law in the matter of preparation for trial. The supreme court does not question the full jurisdiction of the trial court unless the trial was without the due process of law required by the

Organic Act. In all the array of cases relied upon by the supreme court to sustain its view, none seems to be in point. Such, for example, are the cases cited where prisoners were tried without a jury or a grand jury, one being required; or where the court did not have initial jurisdiction, not being duly constituted; or where it clearly exceeded its jurisdiction, rendering its judgment void; or where the judgment was clearly without authority of law. With the judgment of conviction and the commitment fair on their face and rendered and issued by a court of competent jurisdiction, with no precedent or principle clearly pointing to a fatal defect of jurisdiction, the court should have indulged in no presumptions or speculations against the validity of the judgment. Now, assuming, as the supreme court thought, that appellee invoked section 30,

1. The trial court had jurisdiction to decide, as a question of law, arising in the course of the trial, the question of the applicability of that section.

The trial court held that section 30 was not applicable in a case appealed from a municipal court to a court of first instance. The decision, whether right or wrong, cannot affect the jurisdiction. Presumably it is not for this Court to say whether the trial court's view was right or wrong, but clearly the reasons for the view are sufficient to negative any inference that it was arrived at inconsiderately or arbitrarily.

General Order No. 58 does not provide that the defendant must *twice* be allowed time to answer the same complaint; nor that he shall twice be entitled, on demand, to at least two days to prepare for trial on the same complaint. Those privileges are granted upon certain conditions once for all. The accused cannot secure a double indulgence of them merely by appealing. It is not to be supposed that the accused, after answering the complaint in the Municipal Court, as we have seen he did, needed or was intended to have time to answer the same complaint in the appellate court. The law requires no vain and useless act, and the framers of a system of criminal procedure for a jurisdiction like the Philippines, where, perhaps more than elsewhere, the tendency is to delay and continue, could not have intended to open wide the door for dilatory proceedings by offering a double opportunity to claim privileges which need be exercised but once in order to safeguard the defendant's rights. It would be almost as logical to say that after an original trial in the Court of First Instance the accused who appeals to the supreme court must there be allowed the same fixed period to answer the complaint and to prepare for trial as to claim that appellee, after exercising both these privileges in the Municipal Court, was entitled to demand them again after he had appealed to the Court of First Instance. Section 1 of said General Order No. 58 provides that "the following provisions shall have the force and effect of law in criminal

matters in the Philippine Islands * * *." Therefore, that instrument applies in criminal matters in the Philippine Islands without limitation as to courts. It governs the Municipal Court no less than the Court of First Instance if the proceeding is commenced in the former. Section 19 of said General Order provides that "if on the arraignment the defendant requires it, he must be allowed a reasonable time, not less than one day, to answer the complaint or information." The purpose of sections 19 and 30 evidently is to secure to the accused ample notice at the beginning of the prosecution when he may be fairly presumed ignorant of the charge. But no such necessity exists after the accused has once been through a trial. He knows all about the charges, has presented his witnesses and submitted his defense. If he then chooses to appeal to another court it is assumed that the experience he has had and the interval that has elapsed have enabled him to prepare for trial, and that if anything more is needed the discretion of the appellate court may be trusted to provide it and give him all that was reasonably required, as was done here. There is nothing in General Order No. 58 or elsewhere to justify the theory that the privileges of section 19 or section 30 may be claimed twice or in two different proceedings. The plain import of the law is to provide these privileges once for all in the initial proceeding in the court where it was started; not that the accused may enjoy them there and then initiate

another proceeding in a different court for the purpose of enjoying them again. It is true that this action stood for trial *de novo* in the Court of First Instance, but the time provided by section 30 is given exclusively in order to prepare for trial, and there is no indication that the preparation for, or any other preliminaries to, the trial shall be *de novo*. On the contrary, these preliminaries are treated as distinct from the trial itself, and are discussed in sections wholly apart from those governing "*The Trial.*" The sole mention of the privileges now invoked for the appellee is found in sections 19 and 30 before the trial is even touched upon. Even in section 15, which enumerates the "*Rights Of The Accused At The Trial,*" there is no mention of said privileges. Clearly, then, a trial *de novo* includes only the proceedings governed by section 31 *et seq.* It cannot be stretched so as to cover those distinct and independent privileges previously discussed which must be exercised before the trial opens and which are nowhere required to be renewed on appeal. The appellee, having fully availed himself of these privileges in the Municipal Court, was not entitled to claim them again, and it is not unfair to infer that the attempt to do so was merely a part of the systematic policy of delay which enabled him to get one or more continuances and which afterwards compelled him to be called into the Municipal Court by bench warrant. However, the trial court had jurisdiction to decide the question, and the decision whether right or wrong cannot affect the jurisdiction.

2. Denial of time for preparation prescribed by section 30 is not a violation of the due process of law provisions of the Organic Act.

(a) Section 30 is not a due process of law standard.

By every principle of common and constitutional law the right to time for preparation for trial is not a fundamental right affecting jurisdiction, but is a matter resting in the sound discretion of the court. *Franklin* v. *South Carolina*, 218 U. S. 161, 168; *Foster's Crown Law, Case of Ratcliffe*, 41. Due process of law does not require that that time be fixed by statute, and it is a subject of legislation only in a very few States. Statutory regulation would operate as a limitation upon the court's discretion, but not upon its jurisdiction. Section 30 was not even designed to effectuate the due process of law provisions of the Organic Act. That order was promulgated during the military occupation and before Congress enacted the Organic Act. Doubtless it would not be contended that said section cannot be repealed by the Philippine legislature, leaving the matter of time for preparation just where it is in nearly all American jurisdictions—in the discretion fo the court. If the Philippine legislature were to say nothing on the subject, or if it were to prescribe a different time, or if it were to prescribe what the trial court actually did, the due process of law provisions would not thereby be violated. *Matter of Moran, supra.* Section 30 neither measures nor defines any element of due process of law. If sec-

tion 30 did not exist the prejudicial denial of reasonable time for preparation would only be error not affecting the validity of the judgment. It is difficult to see how denial of time fixed by statute can have any different effect upon the judgment, if the view is correct that such a statute limits the discretion of the court only and not its jurisdiction.

(b) The decisions here at home do not support the view that noncompliance with such a statute violates the due process of law provisions and renders the trial void.

Due process of law means the same in the Philippines as it means here. It is the right which these constitutional provisions secure to persons accused of crime in this country that was carried to the Philippines by the congressional enactment, and therefore according to a familiar rule the prevailing course of decisions here may and should be accepted as determinative of the nature and measure of the right there. *Kepner* v. *United States,* 195 U. S. 100, 122; *Serra* v. *Mortiga,* 204 U. S. 470; *Weems* v. *United States,* 217 U. S. 367; *Diaz* v. *United States,* 223 U. S. 455. The decisions in this country, so far as ascertained, give no support to the view that a right to postponement, whether regulated by statute or left to judicial discretion, is a fundamental right essential to jurisdiction. See *Franklin* v. *South Carolina, supra; Isaacs* v. *United States,* 159 U. S. 487; *Woods* v. *Young,* 4 Cranch 238. General Order No. 58 was borrowed largely from the Code of

Criminal Procedure of California. Almost the identical language of sections 19 and 30 is found in sections 990 and 1049 of the California Code, and sections 4770 and 4797, Compiled Laws of Utah. Similar provisions are found in the Codes of Criminal Procedure of New York (section 357), Tennessee (section 7168, Annotated Code), Montana, Texas and Iowa. In none of these States does the right seem to be regarded as fundamental and jurisdictional. See *Ex parte Haase*, 190 Pac. 946; *People* v. *Frederichs*, 39 Pac. 944; *People* v. *Winthrop*, 50 Pac. 390; *People* v. *Harper*, 139 App. Div. (N. Y.) 344; *Evans* v. *State*, 36 Tex. Cr. Rep. 32; *Reed* v. *State*, 31 Tex. Cr. Rep. 35; *Johnson* v. *State*, 49 S. W. (Tex.) 618; *King* v. *State*, 56 S. W. (Tex.) 926; *Counts* v. *State*, 49 Tex. Cr. Rep. 329; *Templeton* v. *State*, 146 S. W. (Tex.) 933; *Partridge* v. *State*, 147 S. W. (Tex.) 234; *Stephens* v. *State*, 147 S. W. (Tex.) 235; *State* v. *Harris*, 100 Iowa 188, 69 N. W. 413; *State* v. *King*, 97 Iowa 440; *State* v. *Jordan*, 87 Iowa 86; *State* v. *De Wolf*, 29 Mont. 418; *Nokes* v. *State*, 6 Cold (Tenn.) 297; *Taylor* v. *State*, 11 Lea (Tenn.) 712.

The question in the above cases was whether the denial of the time prescribed by statute was reversible error. Of course, a judgment may be erroneous and not void, and it may be erroneous because it is void; and while the question of error does not necessarily determine its affect upon jurisdiction, still none of the cases discusses or suggests it as jurisdictional. The mere fact that habeas corpus seems

not to have been resorted to as a proper remedy in cases of this kind is significant. On principle, jurisdiction should not depend upon a mere matter of time. *Gonzales* v. *Cunningham*, 164 U. S. 621. Missouri, section 2558 R. S., requires forty-eight hours between the delivery of a copy of the indictment and the arraignment; this evidently was regarded as purely procedural in *State* v. *Hunter*, 171 Mo. 435. Sentence pronounced upon a verdict on a plea of guilty within less time than the statute prescribes held a mere irregularity in *Re Barton*, 6 Utah 664; 83 Cal. 621. From the fact that the statute is mandatory even though it confers upon the accused a substantial right, it does not necessarily follow that a failure to comply with its terms renders the entire proceeding void. For instance, in many jurisdictions, including the United States (section 1033 R. S.), the statute requires that the defendant in a capital case must be furnished with a list of the witnesses against him a fixed number of days before the trial, the purpose being to enable him to prepare his defense. Many courts hold such a statute to be directory only (see *Boulter* v. *State*, 42 Pac. 606, 610, and cases there discussed), while others, including this Court, hold that the statute is mandatory. But even where the statute is held to be mandatory, noncompliance does not appear to go to the jurisdiction so as to render the entire proceedings void and subject to attack by habeas corpus. *Logan* v. *United States*, 144 U. S. 302; *Hickory* v. *United States*, 151 U. S. 303, 308.

B. THE REQUIREMENTS OF DUE PROCESS OF LAW WERE FULLY MET IN THE TRIAL COURT.

This Court has made no attempt to define due process of law, but, as was said in *Wing* v. *United States*, 218 U. S. 272, 280,

> This court has had frequent occasions to consider the requirements of due process of law as applied to criminal procedure, and, generally speaking, it may be said that if an accused has been heard in a court of competent jurisdiction, and proceeded against under the orderly processes of law, and only punished after inquiry and investigation, upon notice to him, with an opportunity to be heard, and a judgment awarded within the authority of a constitutional law, then he has had due process of law. *Rogers* v. *Peck*, 199 U. S. 435; *Twining* v. *New Jersey*, 211 U. S. 78, and cases there cited.

No element there enumerated was omitted in the trial of this case. The only question is one born of the fact that the insular supreme court has held that what was at most a mere error or irregularity worked a total divestment of jurisdiction. The trial judge did not exceed his power in deciding that the requirements of the local statute were not applicable, though that decision may have been wrong. Indeed, he may have violated the local law without divesting his jurisdiction, for, as was said by Mr. Justice Holmes in the *Matter of Moran, supra*, "this court will not countenance the notion that if the law was

disobeyed it affected the jurisdiction of the court," citing in that connection *Ex parte Harding*, 120 U. S. 782; *Re Wilson*, 140 U. S. 575. In the Moran case it was contended that the petitioner was compelled to be a witness against himself contrary to the Fifth Amendment, because he was compelled to stand up and walk before the jury, and because during a recess the jury was stationed so as to observe his size and walk, as to which this court said, "If this was an error, as to which we express no opinion, it did not go to the jurisdiction of the court." Even though a constitutional right is involved, if the court had jurisdiction to try the case, habeas corpus is not a proper writ to correct errors or irregularities. There was no arbitrary action here; there is no question as to the fairness of the trial and, upon principle and the decisions of this court in analogous cases, it ought not to be held that appellee was deprived of his liberty without due process of law. *Ex parte Harding*, 120 U. S. 782; *Kohl* v. *Lehlback*, 160 U. S. 293; *Felts* v. *Murphy*, 201 U. S. 123, 129; *Brown* v. *New Jersey*, 175 U. S. 172, 175; *Valentina* v. *Mercer*, 201 U. S. 131.

IV.

HABEAS CORPUS WAS NOT THE PROPER REMEDY, AND THE SUPREME COURT NOT ONLY ABUSED THE WRIT BUT VIOLATED ITS OWN JURISDICTIONAL POWER.

1. The proceeding complained of in the trial court being at most only erroneous or irregular, habeas corpus was not the proper remedy.

That this is true is too elementary to justify the citation of authorities for it.

2. Incomparably more serious and more nearly fundamental defects than the one here complained of are not remediable by habeas corpus.

If the writ cannot be allowed in cases where the petitioner is convicted upon the testimony of one witness where the law requires two to convict (*State* v. *Phillips*, 73 Minn. 77), or where a change of venue is improperly overruled (*State* v. *Crinklaw*, 40 Neb. 759), or where he is denied the right to compulsory process for obtaining witnesses in his favor (*Ex parte Harding*, 120 U. S. 782), or where there is a failure to allow the prisoner a preliminary examination in accordance with the statute (*State* v. *Barnes*, 3 N. Dak. 131), or where the conviction is had under a law that had not been legally adopted (*Ex parte Mitchell*, 104 Mo. 121), or where there is a conviction by a jury improperly composed in part of aliens (*Kohl* v. *Lehlback*, 160 U. S. 293), or where there is a trial without a jury, when a jury is a matter of right (*Humphries* v. *District of Columbia*, 174 U. S. 190), or where the judge is only a judge *de facto* (*In re Manning*, 139 U. S. 504), or where there is no arraignment on a new trial (*Garland* v. *Washington*, 232 U. S. 642), or where there is a failure to see that the accused, almost totally deaf and on trial for murder, is informed of the testimony (*Felts* v. *Murphy*, 201 U. S. 123), it seems idle to claim that any irregularity of procedure alleged in the petition in this case can justify the issuance of the writ.

3. The supreme court violated its own jurisdiction under Philippine law in allowing the writ.

For, as it is generally provided by the habeas corpus acts in the various jurisdictions that the writ shall not lie to discharge a prisoner who is in custody by virtue of a judgment, sentence, order or decree of a court of competent jurisdiction, so is it provided in section 528 of the Philippine Code of Civil Procedure,

> *When the writ shall not be allowed.*—If it appears that the person alleged to be restrained of his liberty is in custody of an officer under a process issued by a court or magistrate, or by virtue of a judgment or order of a court of record, and that the court or magistrate had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appear after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order.

(a) And thereby violated the Federal law constituting it. For section 9 of the Organic Act provides

> That the Supreme Court and the courts of first instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by the government of said islands, subject to the power of said government to change the practice and method of procedure. * * *

4. Appellee's remedy, under local law, is by *certiorari* notwithstanding the supreme court's statement that "if the accused is not entitled to habeas corpus he is without remedy." Evidently the court had in mind and felt it necessary to meet the well established proposition that habeas corpus will not issue if there is another adequate remedy. It is true that judgments of the courts of first instance in cases appealed from justices' and municipal courts are final, except in a few instances, and an appeal to the supreme court was not allowable in this case (sec. 43, G. O. 58). But the court either overlooked or ignored section 514 of the Philippine Code of Civil Procedure (Act No. 190), which clearly furnishes the remedy, and the only remedy, in this case. That section is as follows:

> The Supreme Court shall have jurisdiction concurrent with the Court of First Instance in certiorari proceedings over any other inferior tribunal, board or officer exercising judicial function that has exceeded jurisdiction of such tribunal, board or officer, or where there is no appeal or plain, speedy or adequate remedy; and shall likewise have original jurisdiction in certiorari proceedings over the proceedings of Courts of First Instance wherever said courts have exceeded their jurisdiction, and there is no plain, speedy and adequate remedy by bill of exceptions or appeal, or otherwise. * * *

This question of the trial court's exceeding its jurisdiction may be reviewable by the supreme court by certiorari, and in no other way. The claim that the supreme court, by use of the writ of habeas corpus, can question final judgments of courts of competent jurisdiction by reason of "its revisory and supervisory powers, which it has in cases of this kind," especially when the statute has denied a review by habeas corpus and has prescribed a different remedy, is dangerous and unsound. It had no such power by Philippine law at the time of the passage of the Organic Act, and has been given none such since. An assumption of such power is, therefore, in violation of section 9 of said Organic Act.

V.

IF MERE PROCEDURAL ERROR IS TO BE REMEDIED THROUGH HABEAS CORPUS, AS WAS ATTEMPTED IN THIS CAUSE, THE WHOLE COURSE OF CRIMINAL JUSTICE IN THE PHILIPPINE ISLANDS MAY BE DERANGED, OR EVEN DEFEATED.

The supreme court granted the writ of *habeas corpus* in violation of the local statutes and of all the principles of jurisprudence clustering around the writ. In so doing not only did it cause a miscarriage of justice but it brought serious confusion into the Philippine law. It must be remembered that *habeas corpus* is a new and unfamiliar remedy in that jurisdiction. The introduction of this time-

honored writ, so highly prized in Anglo-Saxon countries, has wrought almost a revolution in criminal procedure in the Philippine Islands where until the days of the American occupation it was unknown, and those whose legal training was acquired under Spanish sovereignty are likely to be wholly unfamiliar with it. If this decision stands it is difficult to see what procedural error may not be distorted into an excuse for awarding the writ. It is only with difficulty that that remedy here at home is confined to its historical limits. With a perversion for a precedent, it will be exceptionally difficult in this jurisdiction to which it is historically foreign. Then, too, with respect to the merits of the case, it is unfortunate that the supreme court became extremely technical at a time when the tendency is to construe statutes, and even constitutional safeguards (*Garland* v. *Washington*, 232 U. S. 642) so as to preclude their perversion into expedients for cheating justice.

CONCLUSION.

The order of the Supreme Court of the Philippine Islands discharging appellee from custody should be set aside, with directions to remand him to the custody of the Director of Prisons.

S. T. ANSELL,
Attorney for Appellant.

APPENDIX A.

[*Extracts from General Orders No. 58, 1900.*]

GENERAL ORDERS, NO. 58, SERIES OF 1900.

OFFICE OF THE U. S. MILITARY GOVERNOR IN THE PHILIPPINE ISLANDS.

MANILA, P. I., *April 23, 1900.*

GENERAL ORDERS, No. 58.

* * * * * * *

SECTION 1. The following provisions shall have the force and effect of law in criminal matters in the Philippine Islands from and after the 15th day of May, 1900, * * *

RIGHTS OF ACCUSED AT THE TRIAL.

SEC. 15. In all criminal prosecutions the defendant shall be entitled:

1. To appear and defend in person and by counsel at every stage of the proceedings.

2. To be informed of the nature and cause of the accusation.

3. To testify as a witness in his own behalf; but if a defendant offers himself as a witness he may be cross-examined as any other witness. His neglect or refusal to be a witness shall not in a manner prejudice or be used against him.

4. To be exempt from testifying against himself.

5. To be confronted at the trial by and to cross-examine the witnesses against him. Where the testimony of a witness for the prosecution has previously been taken down by question and answer in the presence of the accused or his counsel, the defence having had an opportunity to cross-examine the witness, the deposition of the latter may be read, upon satisfactory proof to the court that he is dead or insane, or cannot with due diligence be found in the Islands.

6. To have compulsory process issue for obtaining witnesses in his own favor.

7. To have a speedy and public trial.

8. To have the right of appeal in all cases.

DEMURRERS AND PLEAS.

SEC. 19. If, on the arraignment, the defendant requires it, he must be allowed a reasonable time, not less than one day, to answer the complaint or information. He may, in his answer to the arraignment, demur or plead to the complaint or information.

* * * * * * *

SEC. 30. After his plea the defendant shall be entitled, on demand, to at least two days in which to prepare for trial.

THE TRIAL.

SEC. 31. The plea of not guilty having been entered, the trial must proceed in the following order:

* * * * * * *

APPEALS.

SEC. 43. From all final judgments of the Court of First Instance or courts of similar jurisdiction, and in all cases in which the law now provides for appeals from said courts, an appeal may be taken to the Supreme Court as hereinafter prescribed. The convicted party may appeal from any final judgment of a justice of the peace in a criminal cause to the Court of First Instance by filing a notice of appeal with such justice within fifteen days after the entry of judgment. Upon such notice being so filed, the justice shall forward to the Court of First Instance all original papers and a transcript of all docket entries in the cause, and the provincial fiscal shall thereupon take charge of the cause in behalf of the prosecution. The judgment of the Court of First Instance in such appeals shall be final and conclusive except in cases involving the validity or constitutionality of a statute or the constitutionality of a municipal or township ordinance. (As amended by Act 1627, sec. 34.)

APPENDIX B.

[Sections, Code Civil Procedure (Act 190), relating to Habeas Corpus.]

525. The writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty or by which the rightful custody of any person is withheld from the person entitled thereto except in cases expressly excepted.

526. The writ of habeas corpus may be granted by the Supreme Court or any judge thereof, in term time or in vacation, and if so granted it shall be enforceable anywhere in the Philippine Islands, and it shall be made returnable before the court or any judge thereof. It may also be granted by a court of first instance or a judge thereof, in term time or in vacation, and returnable before himself, enforceable within his judicial district only.

* * * * * * *

528. If it appears that the person alleged to be restrained of his liberty is in custody of an officer under process issued by a court or magistrate, or by virtue of a judgment or order of a court of record, and that the court or magistrate had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appear after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment or order.

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